

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Greenville County

Honorable R. Scott Sprouse, Circuit Court Judge

TERRY MCCALL,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2021-000385

APPENDIX

JESSICA M. SAXON
Appellate Defender

ALAN WILSON
Attorney General

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

TAYLOR Z. SMITH
Assistant Attorney General
Rembert Dennis Building
1000 Assembly Street, Suite 519
Columbia, SC 29201

ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

RECEIVED

Feb 22 2022

S.C. SUPREME COURT

INDEX

INDEX i

LOWER COURT TRANSCRIPTS AND DIRECT APPEAL DOCUMENTS

TRIAL TRANSCRIPT DAY 1 - MAY 12, 2015 1
TRIAL TRANSCRIPT DAY 2 - MAY 13, 2015 165
TRIAL TRANSCRIPT DAY 3 – MAY 14, 2015 305
RECONSTRUCTION HEARING TRANSCRIPT – MARCH 14, 2017 391
RECONSTRUCTION EXHIBITS #1-11 493
INDICTMENTS AND SENTENCING SHEET 530
FINAL BRIEF OF APPELLANT 533
FINAL BRIEF OF RESPONDENT 582
OPINION OF THE COURT (REVISED) 617

PCR APPLICATION AND AMENDMENTS

ORIGINAL PCR APPLICATION FILED MARCH 10, 2020 626
AMENDED PCR APPLICATION FILED MARCH 23, 2020 637
AMENDED PCR APPLICATION FILED APRIL 1, 2020 641
AMENDED PCR APPLICATION FILED APRIL 27, 2020 648
AMENDED PCR APPLICATION FILED JUNE 10, 2020 651
AMENDED PCR APPLICATION FILED JUNE 18, 2020 656
AMENDED PCR APPLICATION FILED JUNE 18, 2020.....659
AMENDED PCR APPLICATION FILED AUGUST 26, 2020.....664
AMENDED PCR APPLICATION FILED AUGUST 26, 2020.....668
AMENDED PCR APPLICATION FILED SEPTEMBER 16, 2020.....672
AMENDED PCR APPLICATION FILED SEPTEMBER 23, 2020.....676
AMENDED PCR APPLICATION FILED NOVEMBER 5, 2020 680
AMENDED PCR APPLICATION FILED NOVEMBER 5, 2020 684
AMENDED PCR APPLICATION FILED DECEMBER 10, 2020.....690
AMENDED PCR APPLICATION FILED DECEMBER 10, 2020 695

MOTIONS FILED IN PCR ACTION BY PETITIONER ACTING *PRO SE*

MOTION TO RELIEVE COUNSEL AND FORM 4 ORDER
GRANTING MOTION MAY 25, 2020 698
MOTION FOR INJUNCTION DATED MAY 7, 2020 703
SECOND MOTION FOR INJUNCTION DATED JUNE 8, 2020.....707
SUPPORTING DOCUMENTS FOR INJUNCTION FILED JUNE 17, 2020 712

FIRST MOTION FOR SUMMARY JUDGMENT DATED APRIL 24, 2020.....	732
MOTION TO AMEND SUMMARY JUDGMENT MOTION FILED MAY 27, 2020	741
SECOND MOTION FOR SUMMARY JUDGMENT DATED JUNE 24, 2020	744
THIRD MOTION FOR SUMMARY JUDGMENT DATED JUNE 25, 2020	806
MOTION FOR BAIL FILED SEPTEMBER 30, 2020	822
REPLY TO RETURN TO MOTION FOR BAIL FILED DECMBER 10, 2020	826
STATE’S RETURNS	
STATE’S RETURN DATED JUNE 16, 2020.....	830
AMENDED RETURN DATED DECEMBER 10, 2020.....	846
RETURN TO MOTION FOR BAIL FILED NOVEMBER 5, 2020.....	869
PCR HEARING	
PCR HEARING EXHIBITS A-D; F-Z FILED ON NOVEMBER 18, 23, AND 25, PRIOR TO PCR HEARING.....	872
PCR HEARING TRANSCRIPT DATED JANUARY 5, 2021	937
PCR HEARING TRANSCRIPT DATED JANUARY 6, 2021	1081
EXHIBITS ENTERED AT PCR HEARING	1128
ORDER OF DISMISSAL FILED MARCH 3, 2021	1139
RULE 59(e) MOTION TO RECONSIDER FILED MARCH 17, 2021	1179
ADDENDUM TO RULE 59(e) MOTION TO RECONSIDER FILED MARCH 20, 2021.....	1183
ORDER DENYING RULE 59(e) MOTION FILED MARCH 19, 2021	1188

1 STATE OF SOUTH CAROLINA : COURT OF GENERAL SESSION
2 State of South Carolina : 2012-GS-23-10242
3 : TRANSCRIPT RECORD
4 vs :
5 Terry Edward McCall :
6 :

7 May 12, 2015 - Day 1
8 Greenville, South Carolina
9 -----

10 BEFORE: The Honorable Robin Stilwell, Judge

11 A P P E A R A N C E S:

12 Sara Lee Drawdy, Esquire
13 Stan Overby, Esquire
14 Attorney for the State

15 Randy Chambers, Esquire
16 Jake Erwin, Esquire
17 Terry McCall, Pro se

18
19 Caroline Hiskell
20 Thirteenth Circuit Court Reporter
21
22
23
24
25

I N D E X

WITNESSES:

DR

CR

RED

REC

MOTIONS:

Ashley Norman
David MacAlhany
Don Bannister
Wes Hiatt
Wendy C. Bell
Terry McCall
David Andis

26 31
33 49
54
63
68
76 78
90

TRIAL:

Mark Allison
Greg Certain
Allen Hall
Dana Suddeth

135 140
142
145
153

E X H I B I T

IIDENTIFICATION

ID

IN EVD.

State's

1	Map	136	136
2	Scene Photo	144	144
3-25	Scene Photos		
26	EMS Patient Record	188	188
27	EMS Patient Record	188	188
28	EMS Patient Record	188	188
29	SLED Urin/Blood Report	236	236
30	Urine Sample		
31	Blood Sample		
32	Photo of Urine/Blood		
33	Photo		
34	Implied Consent		
35	Evidence Bag	233	250
36	Evidence Bag	233	250
37	Chain of Custody	258	258
38	Evidence Log	263	263
39	Evidence Log		
40	Chain of Custody		
41	Toxicology Report	291	291
42	Toxicology Report	296	296

COURT'S EXHIBIT

1	Indictment	8
2	Brief	15
3-5	Documents	28
6-13	Photos	35
14	Report	43
15	Photo	48

State versus McCall

P R O C E E D I N G S

THE CLERK: All rise, the Honorable Robin Stilwell presiding.

THE COURT: Take your seats, ladies and gentlemen, good morning, I hope everyone is doing well today.

Let's go ahead and call to the bar the State of South Carolina versus Terry Edward McCall. This comes before the Court pursuant to charges of driving under the influence, felony DUI with great bodily injury.

Ms. Solicitor, I'd be happy to hear from you.

MS. DRAWDY: At this time we would ask that you arraign the defendant on his indictment. I have copy that can be handed to him.

THE COURT: Have you served the defendant with this?

MS. DRAWDY: I'm serving it now. His counsel has been provided with copies previously.

THE COURT: Let the record reflect that the defendant has been served with a copy of the indictment.

Mr. Chambers, do you waive a formal arraignment, sir?

MR. CHAMBERS: Your Honor, I do waive formal arraignment but I do have a motion to make at the appropriate time.

State versus McCall

1 THE COURT: I understand and I certainly
2 wouldn't preclude you from making any motions relative to
3 the sufficiency or appropriate necessity of the
4 indictment. As you know it's going to take me five minute
5 to go through a formal arraignment and a lot of that is
6 entirely academic in being we have arrived at the point of
7 trial.

8 MR. CHAMBERS: That's true, Your Honor.

9 THE COURT: It's my understanding that there
10 are motions that each side has to put into the record and
11 therefore I'll defer to counsel and I will hear you on
12 those motions.

13 MR. CHAMBERS: The first motion that I have,
14 your Honor, is with the indictment itself. We believe
15 that the solicitor proceeded in a fashion that is contrary
16 to the rules, and as such we ask that that indictment that
17 was just served on my client be quashed and that this case
18 be dismissed with prejudice.

19 This is a felony DUI, clearly a general
20 sessions offense. The officer at the time he went out and
21 worked the accident and then went to the hospital and made
22 a determination that he believed there was probable cause
23 to charge my client. Rather than go through a neutral and
24 detached magistrate, he simply wrote a traffic ticket and
25 then they arrested my client on that basis.

State versus McCall

1 We believe that is illegal and certainly
2 contrary to the rules and certainly should not have been
3 done that way.

4 The Rule 1 of the South Carolina Rules of
5 Civil procedure even talk about the fact that warrant, not
6 a ticket but a warrant, is supposed to be transmitted to
7 the Solicitor's Office. That was never done in this case.
8 So his arrest at the outset we believe is unconstitutional
9 and should not have taken place and was not pursuant to an
10 arrest warrant.

11 Now, obviously the solicitor was free at any
12 point if the wanted to to pursue a direct indictment and I
13 supposed it's their position is what they just done, but
14 at no point prior to trial was my client ever served.
15 They're serving him now on the day of trial and, of
16 course, this indictment references the traffic ticket that
17 we believe to be contrary to the rules.

18 For all those reasons we would ask the Court
19 to quash that indictment and just dismiss these charges
20 with prejudice because my client has been sitting in jail
21 for over a year now. These things could have been done in
22 a much more timely fashion. He could have had the time to
23 review that indictment and to have been prepared for it.
24 None of those things were done.

25 It's our position that serving it now is

State versus McCall

1 trying to make up for a mistake that they made and they
2 not be, at this late date, allowed to do that. That's our
3 position, Your Honor.

4 THE COURT: Okay, good enough. Solicitor.

5 MS. DRAWDY: Your Honor, to begin with this
6 individual Mr. McCall has not been in jail on this charge
7 for over a year. He has been in and out of jail in
8 Greenville and Pickens County for the past three years
9 since his arrest and the time that he bonded out on this
10 charge. So he has not been sitting in jail on this
11 charge.

12 Section 56.710 specifically authorizes any
13 traffic offense to be placed on a uniform traffic ticket
14 which is what the officer did in this case. It is
15 authorized. Rule 1 does not change that.

16 Furthermore, the True Bill by the grand jury
17 they saw the same evidence they would have seen had it
18 been on a warrant. The same evidence was presented to
19 them and they have found probable cause. So it is common
20 practice and has been and I'm sure Your Honor is aware
21 throughout the State for felony DUI charges to be
22 initiated on a uniformed traffic ticket. It's simply not
23 a procedural problem in this case and certainly not a due
24 process right.

25 THE COURT: Is the charge on the ticket the

State versus McCall

1 very same charge that is on the indictment that was True
2 Billed to the grand jury?

3 MR. OVERBY: I have a copy I can pass up to
4 the Court. It has a code section and it only says felony
5 DUI and we would assert that because this is great bodily
6 injury that is the least charge that could be charged. So
7 we have not upgraded it.

8 THE COURT: I understand.

9 MR. OVERBY: I'll pass that up as a Court's
10 Exhibit.

11 (Indictment marked as Court's Exhibit No. 1
12 for identification.)

13 THE COURT: Mr. Chambers, you may respond.

14 MR. CHAMBERS: Your Honor, it is our position
15 this is more than just a mere traffic ticket. It
16 certainly carries more than 30 days. In fact, it carries
17 up to 15 years in prison. And you can see obviously a
18 warrant that had gone through a neutral magistrate would
19 have some description of what they were actually alleging,
20 and the officer here has simply written in felony DUI. It
21 doesn't have any description about the facts.

22 I would just reiterate our position that the
23 arrest in this case itself was illegal. It shouldn't have
24 been done based on the warrant. It's late service and
25 arraignment on this indictment is too little too late and

State versus McCall

1 we would again as that the Court to quash the indictment
2 and dismiss the case.

3 THE COURT: When was the indictment handed
4 down?

5 MR. OVERBY: Your Honor, it was True Billed
6 in February 2013.

7 THE COURT: Was Mr. Chambers given a copy of
8 that indictment?

9 MR. OVERBY: Not at that time. It is not our
10 practice to do that. It's a matter of public record in
11 the Clerk's Office. He did ask for a copy of it last week
12 and we did provide it to him promptly.

13 THE COURT: I'm going to respectfully deny
14 the motion. I do not think that is failed for the charges
15 to initiate upon a uniformed traffic citation.
16 I do find that subsequently, of course, it was True Billed
17 by the grand jury and then keeping with appropriate
18 procedure.

19 It is somewhat unusually that it would have
20 been served at this later day, however, the substance of
21 the charges were known from inception. That it was a
22 felony DUI which suggests by definition that someone had
23 been hurt as a consequence of operating a motor vehicle,
24 allegedly, in an altered or impaired state.

25 I don't see and there has been no

State versus McCall

1 articulation of prejudice that visits upon the defendant
2 as a consequence of the ticket or as a consequence of the
3 indictment having been served today.

4 I don't see how there was anything that was
5 not disclosed relative to the charges relative to the
6 trial that was coming forward today, therefore, on all
7 those basis I respectfully deny the motion.

8 MR. CHAMBERS: Your Honor, the other motions
9 I have pretrial involves blood evidence that the
10 solicitor, I believe, intends to admit. In this
11 particular case, my client as well as Mr. Suddeth who was
12 unfortunately injured in this wreck were both extricated
13 from their automobile by emergency personnel, transported
14 to the hospital for treatment. My client was somewhat
15 ambulatory and was able to talk to the officer when he got
16 there. It was certainly not a medical necessity for
17 taking any kind of blood test rather than a breath test,
18 but when the officer got to the hospital at some point, he
19 required my client to first submit to a urine test which
20 came back negative for any kind of drugs, but then took a
21 blood test and we're asking to suppress the results of
22 that.

23 The first issue that we have with that is my
24 client -- first of all there was no probable cause to ask
25 for that. At the time this accident in the making of this

State versus McCall

1 investigation will bare this out, my client's car veered
2 over into the other lane and struck Mr. Suddeth's vehicle.

3 There was some evidence in the making that my
4 client's brake's failed. And my client informed some
5 people there that he felt he was going to have a seizure.
6 He's had medical issues involving seizures for most of his
7 life since he was as child. So they knew all of this.

8 There was no alcohol on his breath. The
9 officer even says that in his report. His for believing
10 my client was under the influence was simply his demeanor
11 and the way that he spoke. In this particular accident
12 and this was known to the officer that my client was in as
13 serious car accident. He had hit his head to the point
14 where some of his teeth were knocked out and he hasn't had
15 those replaced or anything, so he had taken a pretty good
16 whip.

17 There was nothing to indicate that he was
18 under the influence so there was no probable cause to ask
19 for those things. So my first issue would be probable
20 cause.

21 My second issue would be with the fact that
22 the officer did not comply with the implied consent laws.
23 We understand that under 56.29.46 that a defendant can not
24 refuse to take the test where a felony DUI -- where
25 there's probable cause that a felony DUI has taken place,

State versus McCall

1 and so that is certainly the case here.

2 However, the officer is still required to
3 inform my client of his implied consent rights and it even
4 says in the implied consent form that under that statute
5 that I just cited that they can require him to take
6 chemical tests. They can require him to give a urine
7 sample, they can require him to give a blood sample. Our
8 position is they did not inform him of those rights.

9 There is an implied consent form that
10 purports that have his signature on it that my client has
11 looked at and said that is not his signature. Frankly
12 when you look at it it is hard to distinguish who
13 signature is it and my client will testify that he was
14 never given this consent form.

15 The third issue we have is our position is
16 United States Supreme Court ruling which was decided April
17 1, 2013, Missouri v. McNeely that that particular statute
18 that I just cited is unconstitutional. The Court held in
19 a fairly long opinion that, first of all, "a warrantless
20 search of a person is reasonable only if it falls within a
21 recognized exception." Clearly this was what would be a
22 warrantless search. The officer I'm sure would be it was
23 appropriate under the statute.

24 The Court says, "Such an invasion of bodily
25 integrity implicates a person's most personal and deep

State versus McCall

1 rooted expectations of privacy."

2 The Court says that search warrants are
3 ordinarily required for searches of dwellings for reasons
4 of absent an emergency. The Court obviously stresses the
5 fact that we're talking about invading someone's body and
6 that reason you've got to get a warrant.

7 Finally, the court ruled that in drunk
8 driving investigations, the natural dissipation of alcohol
9 or we can argue by extrapolating drugs in the blood stream
10 does not constitute an astringency in every case
11 sufficient for conducting a blood test without a warrant.

12 Simply, there's no way to look at Missouri v.
13 McNeeley and not find that the statute that allows a
14 warrantless intrusion into the body of a defendant like
15 Mr. McCall, is unconstitutional under this finding and
16 that is our position and we ask that you suppress the
17 blood evidence in this case, and at the appropriate time
18 my client is ready to testify regarding the implied
19 consent issue.

20 MR. OVERBY: If it please the Court, Your
21 Honor, I'll address Mr. Chambers's motion in turn. The
22 State would contend there was sufficient cause in this
23 case to justify the execution of Section 296 obtaining
24 blood draw. The State is happy to introduce the testimony
25 of Trooper McAlhaney as to the facts and circumstances I

State versus McCall

1 do want a couple issues I do want to clear up.

2 The first is that the blood test in this case
3 was actually obtained prior to the urine test as evidence
4 shown on the records that are involved here.

5 Second of all the probable cause in this case
6 is not based off MAIT's investigation. MAIT's, major
7 accident investigation team, did not finalize their report
8 until after this ticket had been initiated. This is based
9 off the observations of Trooper McAlhaney who was the
10 primary investigating officer.

11 Further, the State concedes that there's no
12 alcohol on the defendant's breath. The State would show
13 that via his testimony that Trooper McAlhaney showed up on
14 an accident scene, he conducted an alcohol investigation
15 while out there and drew a field sketch showing this
16 accident occurred in the opposite lane in which the
17 victim, Mr. Suddeth stood; that the victim was transported
18 to the hospital and was in extreme distress as a result of
19 this accident and that upon arriving at the hospital, he
20 didn't observe an order of alcoholic beverage; however, he
21 did observe that he was some indicia that Mr. Chambers has
22 highlighted and the defendant admitted to taking
23 prescription drugs.

24 Based on that, and again I'll have to put
25 that testimony on the record, again the State would

State versus McCall

1 contend that probable cause existed to bring 2946 into
2 play and it was correct to initiate the traffic ticket.

3 The second contention is the State would show
4 via testimony as well that Mr. McCall was provided with
5 this implied consent advisement and that the felony DUI
6 implied consent advisement, which I have actually briefed
7 the third argument and that's an exhibit to this brief and
8 at that time I present that up to you.

9 The State would show via testimony that
10 Trooper McAlhaney, stood next to Mr. McCall, read the
11 advisement to him per the requirements of the implied
12 consent form, ask him if he understood it and then had him
13 sign it and witnessed him sign it. In that since, the
14 State would show that he complied with the implied
15 consent.

16 THE COURT: The State's position is that
17 happened before the blood test was taken?

18 MR. OVERBY: Correct, Your Honor.

19 THE COURT: Now, the third aspect is the more
20 muddy one as a result of the case of Missouri v. McNeeley
21 which came out a couple of years ago from the Supreme
22 Court and I initially I want to state that it has far
23 reaching implications for the way that we handle DUI cases
24 in South Carolina particularly when great bodily injury
25 and death ensues.

State versus McCall

1 I'd like to present to the Court and make it
2 apart of the record the State's brief in opposition, and I
3 have a copy for the law clerk and court reporter.

4 (Brief marked as Court's Exhibit No. 2 for
5 identification.)

6 THE COURT: Hold on, you've got to be
7 careful. They can't do two things at once.

8 MR. OVERBY: I understand.

9 As to the arguments that are raised in that
10 brief, I presented case law that implies here, most
11 notably Missouri v. McNeeley, Schmurber (ph) v. California
12 and really those are the two that we're dealing with in
13 terms of interpretation.

14 The State's contention essentially is
15 McNeeley has no effect on 2946 in terms of it's
16 constitutionality. And actually the State has a couple of
17 other arguments in advance of that. First, the State
18 would show through testimony to Mr. McCall provided actual
19 consent to the blood test. The State would show that
20 through the testimony of nurse Ashley Norman who actually
21 took the blood sample and the urine sample as well as
22 Trooper MacAlhaney who requested it. Obviously the State
23 understands that we have the burden of proof in that
24 regard.

25 As to the argument, the legal argument about

State versus McCall

1 the constitutionality of the statute. Much of DUI case
2 law and the attainment of these chemical tests in a DUI
3 case comes from the 1966 opinion Schrumber v. California
4 in which the Supreme Court held that under certain set of
5 facts most notably there was a traffic accident that a
6 officer could not obtain a warrant in a timely fashion
7 that he had to leave the scene. He could not get to an
8 individual who was involved in this accident until several
9 hours later and further that the dissipation of alcohol in
10 the defendant's drug stream meant that as time is passing
11 along, the test results are becoming less and less active.

12 Based on that that constituted and estrogen
13 circumstances to the warrant requirement in the 4th
14 Amendment and thus that blood and officers could obtain it
15 in that circumstance.

16 In South Carolina we have a statutory
17 protocol of implied consent. What implied consent does in
18 effect is actually grant substantially more protections to
19 the individual in question than the 4th amendment
20 requires. The premise of that is the driving privilege is
21 a privilege and not a right. That we can request that we
22 can submit to testing if you're found to be if probably
23 cause exists for driving under the influence but you have
24 a right to refuse.

25 In this case with a blood draw and the urine

State versus McCall

1 draw pursuant to 2946 which is all part and parcel of the
2 same statutory protocol, this can only be done in cases
3 where there's great bodily injury and death and by their
4 nature they can only be done where there's a traffic
5 accident of some sort because otherwise it's impossible
6 for such a thing to arise out of this particular statute.

7 With that in mind, McNeeley involved what the
8 court "a routine DUI" investigation. In other words, the
9 officer had probable cause that a traffic violation had
10 been committed. He stopped the defendant, Mr. McNeeley,
11 in order to see what was going on. He had him step out of
12 the vehicle order to conduct a field sobriety test and
13 made a determination that he was driving under the
14 influence. At that point he asked Mr. McNeeley to submit
15 to a breathalyzer test to which Mr. McNeeley said, no, I'm
16 not going to do it. Missouri did have a complied consent
17 law at that time, however, it did not mandate that you
18 necessarily provide the sample as well. It had a right of
19 refusal. It did not have a statute on these lines with
20 regards to felony DUI.

21 What ended up happening is that McNeeley was
22 transported to the hospital by an officer and about 30
23 minutes after he was placed under arrest a blood draw was
24 conducted over Mr. McNeeley's objection and was used
25 against him at court at a subsequent trial.

State versus McCall

1 That blood draw was actually suppressed by
2 the trial court in the case and subsequent to that the
3 State chose to challenge the suppression of that on the
4 basis of trying to seek a bright line rule that the
5 dissipation of alcohol in every case will constitute
6 estrogen circumstances to proceed without a search
7 warrant. That's all McNeeley deals with.

8 McNeeley says, okay, we understand your
9 argument, that's overly broad. McNeeley holds that in
10 Schmurber it said you can do these things but it had to be
11 done on case by case analysis. One thing that they
12 highlighted the additional special facts in the case.

13 They found that none of these special facts
14 that existed in Schmurber existed here. They also
15 highlighted a couple of additional factors, most notably
16 that in some jurisdictions it's easier to obtain a warrant
17 now thanks to technological advancements and things of
18 that nature.

19 In any event, the court essentially said
20 we're not going to go away from Schmurber's holding that
21 there has to be a case by case analysis. We're just
22 holding -- it is not a per se exception to the warrant
23 requirement that dissipation of alcohol in the blood
24 stream will constitute an exception.

25 Missouri essentially went for the gold and

State versus McCall

1 the fell short in trying to get this bread line rule. As
2 that relates to the present case, Your Honor, and the
3 present nature of the 2946 statute, this only occurs in
4 great bodily injury and death circumstances, and as stated
5 by their very nature the only thing that can be involved
6 is a traffic accident that involves injuries.

7 The State has numerous witnesses here to
8 discuss the particular nature of these accidents. In
9 addition this accident scene in question and these witness
10 will to testify they are chaotic. They require
11 investigation and time. There's often a lack of manpower
12 in order to be able to deal with this, particular in this
13 case where this accident was truly a horrific accident.

14 Further, South Carolina doesn't have a
15 e-warrant or telephonic communication statute to allow for
16 a magistrate to essentially -- a person to call over the
17 phone and obtain a warrant. You have to have an affidavit
18 sworn under oath in the presence of magistrate which means
19 you got to go find them. These accidents occur in the
20 middle of the night so that's all those part and parcel.

21 In addition, the real crux that makes this
22 different and the felony DUI statute different as well, is
23 that you can be charged with felony DUI based upon the
24 belief that the person is under the influence of alcohol,
25 drugs, or a combination there of. In McNeeley the court's

State versus McCall

1 primary conclusion is we're not going to recognize this
2 pro se rule because it's somewhat easy and predictable to
3 make a determination about how alcohol is going to process
4 out of the blood stream. You are able to do retrograded
5 extrapolations now which can tell you, hey, he's got this
6 point alcohol point so we can go back to the point before
7 that in order to determine what his blood alcohol was.

8 With the narcotics it doesn't work that way.
9 Narcotics have varying half lives. The SLED toxicology
10 lab will testify about this variance and half lives, the
11 unpredictability of these half lives in particular drugs.
12 And the fact that in some cases the drugs can be out of
13 the system in several hours.

14 So there's difference there in terms of what
15 McNeeley was considering versus what we have in these
16 particular cases.

17 In addition, implied consent protocols have
18 been upheld and have withstood constitutional muster in
19 numerous situations. In fact, McNeeley references implied
20 consent statutes as a means by which states can obtain
21 this evidence.

22 Finally, Your Honor, as to constitutionality
23 of the statute. Statutes according to the South Carolina
24 Supreme Court, all statutes are presumed constitutional
25 and will, if possible be construed so as to render them

State versus McCall

1 valid. So in other words unless we get some sort of
2 ruling that says this statute is unconstitutional, they're
3 presumed constitutional and therefore should be followed.

4 The State would then advance arguments that
5 even if the State was to find that 2946 is not
6 constitutional that estrogen circumstances based on the
7 testimony of witnesses, exhibits existed in this situation
8 they were very similar to Schmurber and I would argue 2946
9 essentially codifies this situation of Schmurber such that
10 an estrogen circumstances existed. And finally, Your
11 Honor, this felony DUI statute 2946 has been around for 16
12 years. It was first enacted in 1998.

13 Troopers are here from the South Carolina
14 Highway Patrol that have been around for 20 years and they
15 would show based off testimony, Your Honor, they have
16 never sought a search warrant in a felony DUI case in that
17 entire time. They rely upon 2946 as constitutionality
18 essentially as a legislative method of limiting or making
19 and rendering these 4th amendment searches reasonable. At
20 the time that this particular test was conducted, that was
21 still good law and based off that reliance, these officers
22 haven't relied on a statute that was blatantly
23 unconstitutional to the point it was totally unreasonable
24 for them to rely upon.

25 Other jurisdictions have struggled with this

State versus McCall

1 issue, Your Honor. There was a magistrate that suppressed
2 17 of these cases and that magistrate was overruled by a
3 federal district court by what's called a good faith
4 exception. In other words, you're relying on a statute
5 and you believe you have the authority to attain it, it's
6 not unreasonable for you to attain that sample and
7 therefore we should be allowed to proceed.

8 I believe that on this particular issue,
9 since it is a pretty large one, the State would request to
10 proffer some testimony.

11 THE COURT: It's my understanding from all of
12 you that there's a Jackson v Denno and I presume that the
13 arresting officer will be testifying with respect to that
14 as well. Am I right?

15 MR. OVERBY: It was not taken by the
16 investigating ---

17 THE COURT: We'll take all of that and with
18 these I'll take under advisement when I hear all the
19 evidence related to that and the Jackson as well.

20 Mr. Chambers.

21 MR. CHAMBERS: Just a brief response, Your
22 Honor. I hear this very complex argument from the
23 solicitor and it seems to me as I listen that it comes
24 down to they really needed the evidence because this was a
25 really serious case and for that reason that justifies the

State versus McCall

1 intrusion of my client's person to get his blood.

2 There was nothing at all ambiguous about the
3 language from the United States Supreme Court in the
4 McNeeley case. It flat out said we understand that there
5 may be some estrogency in the fact that the substance
6 inside a person will dissipate over time and time is of
7 the essence in getting that out. We have to weigh that
8 against this extraordinary intrusion, this extraordinary
9 search in going into someone's body.

10 Basically what they're saying is, because
11 they need it so badly, we should just be able to gather
12 the evidence the way we see fit. This is an evidence
13 gathering exercise. It's no different than trying to get
14 a statement from somebody or going into someone's house to
15 execute a search or any of those things. The Supreme
16 Court said unambiguously that is not an estrogen
17 circumstance that would obviate the need for a warrant.

18 They said in these particular circumstances
19 they need to get a warrant.

20 I would also point out and I meant to raise
21 this a minute ago and I guess it will be another issue in
22 the case, if the circumstances were as estrogen as they
23 say, our position is they were outside the time frame for
24 collecting the blood. The statute requires the blood to
25 be collected within a three hour time frame. The accident

Ashley Norman - Direct

1 report shows this accident in approximation occurred at
2 17:50. The blood draw, according to the form, happened
3 between 20:45 and 21:05. There's no way to know when the
4 blood itself was actually drawn. I'm assuming about 20:45
5 which arguable if our time was exactly right when the
6 accident occurred would put them five minutes within that
7 three hour time frame but I'm assuming since she then put
8 21:05 this process was a fairly lengthy process.

9 So actually taking the blood sample occurred
10 somewhere near the end of that time frame. They would
11 outside the three hour limit. That's another reason to
12 suppress it but it also goes, if there is any credence
13 what so ever to their argument that time was of the
14 essence, it goes to that argument as well.

15 THE COURT: One question, under McNeeley,
16 were they dealing with an implied consent statute? Did
17 they take the sample pursuant to an implied consent
18 statute?

19 MR. OVERBY: No, Your Honor.

20 THE COURT: Let's go ahead and proffer that
21 into the record. I know that there is some Jackson v.
22 Denno as well that you need to put into the record.

23 MR. OVERBY: That is correct, Your Honor.

24 THE COURT: Then if you would, you can call
25 your first witness as it relates to the McNeeley issue and

Ashley Norman - Direct

1 then you can roll straight into the next issue of
2 statements that you wish to introduce at trial.

3 MR. OVERBY: And Your Honor just to be clear,
4 the State is now abandoning it's argument that Mr. McCall
5 actually consented to this particular quarto. At this
6 time the State would call Ms. Ashley Norman to the stand.

7 THE CLERK: Please come forward to be sworn
8 in. Please raise your right hand place your left hand on
9 the Bible.

10 ASHLEY NORMAN, having been duly sworn,
11 testified as follows:

12 Thank you. You may be seated.

13 MR. OVERBY: The Court's indulgence, Your
14 Honor.

15 DIRECT EXAMINATION

16 BY MR. OVERBY:

17 Q Good morning, Ms. Norman, would you state your
18 name for the record.

19 A Ashley Norman.

20 Q And what do you do for a living, Ms. Norman?

21 A I am a staff nurse at Greenville Memorial
22 emergency room.

23 Q How long have you been a staff nurse at
24 Greenville Memorial?

25 A Over seven years.

Ashley Norman - Direct

1 Q Do you have training and experience that
2 qualifies you for that particular role?

3 A I do.

4 Q Could you please provide the Court with that? Do
5 you have a degree?

6 A I have a degree and I have a nursing license.

7 Q And that nursing degree is provided by the State
8 of South Carolina?

9 A It is.

10 Q How long have you been a registered nurse?

11 A A little over seven years.

12 Q You've always been at Greenville Memorial?

13 A Also at Greenville Memorial.

14 Q And you work in the ER. Now as part of your
15 duties -- what are some of your duties and
16 responsibilities at Greenville Memorial Hospital?

17 A I care for patients as they come in based on
18 their news, draw blood, start IV's, wound care,
19 respiratory care.

20 Q One of those duties is a sample collection?

21 A Yes, I draw blood.

22 Q And urine?

23 A We collect urine.

24 Q What is the primary time in which you collect
25 blood and urine?

Ashley Norman - Direct

1 A Typically based on a doctor's order. I mean
2 based on a patient's condition.

3 Q Are you ever requested to obtain a sample by law
4 enforcement?

5 A I have been.

6 Q Is there a difference in the manner in which
7 those two samples are handled?

8 A There is.

9 Q Talk about that just briefly.

10 A With a legal sample, meaning a sample requested
11 by law enforcement we don't use the alcohol swabs, we use
12 a betadine(ph) swab and collect into grey tubes. We use
13 just a small butterfly needle and collect the blood, label
14 the blood and that goes directly to chain of command to
15 the officer.

16 Q So it's handled differently than most other
17 samples.

18 A Most other samples we use alcohol swab and draw
19 the blood and label it and send it to the lab.

20 Q In the present case, were you on duty on the
21 night of March 4, 2012?

22 A I believe I was.

23 Q Did you have occasion to come across the
24 defendant in this case?

25 A I did.

Ashley Norman - Direct

1 MR. OVERBY: I'd like to have marked Court's
2 Exhibit 3, 4, and 5.

3 (Documents marked as Court's Exhibits Nos. 3,
4 4 and 5 for identification.)

5 BY MR. OVERBY:

6 Q Ms. Norman, I'd like to present to you what's
7 been marked as Court's Exhibit No. 3. Does your signature
8 appear on here?

9 A It does.

10 Q What does that document show?

11 A I believe it's a blood urine collection chain of
12 command which we typically use.

13 Q You typically use it to show you are the party
14 that took this particular sample.

15 A It is.

16 Q And at the request of a law enforcement officer?

17 A Yes.

18 Q I'm going to show you Court's 4 and 5, can you
19 tell me what those documents are?

20 A Those are chain of custody forms.

21 Q Does your signature appear on those documents?

22 A It does.

23 Q What are those chain of custody forms for?

24 A One is for blood and one is urine.

25 Q Can you tell me off those forms how the urine was

Ashley Norman - Direct

1 collected?

2 A It was voided specimen which means the patient
3 was given a sterile urine cup and voided that specimen
4 into the cup and was presented to us.

5 Q So he didn't have to be forced to provide the
6 sample for urine?

7 A No.

8 Q So he presented that into a cup. Now, as to the
9 blood, how many legal blood drugs have you conducted in
10 your experience?

11 A Three, maybe four.

12 Q In your recollection have you ever had an
13 individual refuse that sample?

14 A I have not.

15 Q Have you ever collected a sample where somebody
16 who has refused?

17 A Not where somebody has refused.

18 Q Would you?

19 A I would not.

20 Q Was this case different?

21 A No.

22 Q Do you remember the specific act of withdrawal?

23 A I don't.

24 Q But based on these documents and your
25 recollection, do you recall that he didn't resist.

Ashley Norman - Cross

1 A Right.

2 MR. OVERBY: Thank you. I have no
3 further questions for this witness.

4 THE COURT: Mr. Chambers.

5 CROSS-EXAMINATION

6 BY MR. CHAMBERS:

7 Q One of the forms the solicitor talked to you
8 about is this one that says South Carolina Law Enforcement
9 Urine Blood Collection; is that correct?

10 A It is.

11 Q That's not your form is it, that's actually a
12 form that's provided to you by the trooper?

13 A That's what the trooper bring, yes.

14 Q And your job is simply when the trooper says I
15 want to do this blood draw and this urine test, you simply
16 get the samples; is that correct?

17 A As long as the patient is agreeing.

18 Q I understand. You didn't make the determination
19 that we're going to draw blood, that was the trooper who
20 did that?

21 A Yes.

22 Q That's what we're talking about is the legal
23 sample. You did get blood for medical purposes?

24 A I believe someone did.

25 Q And that was based on medical purposes and

Ashley Norman - Cross

1 provide treatment. Now, somebody checked that "subject
2 has been advised of his or her consent rights." Did you
3 check that?

4 A I don't remember. I probably just signed that
5 name.

6 Q Most likely than not the trooper check that.

7 A I don't remember.

8 Q So you certainly didn't tell Mr. McCall about his
9 implied consent?

10 A Absolutely not.

11 Q There's a signature on here that purports to be
12 the subject signature, but all that indicates is that he
13 received a copy of it, correct?

14 A I don't know that.

15 Q Okay. The only thing that you know about this
16 form is that you signed this?

17 A That's the paper that we sign, yes.

18 Q So, you're only testimony then regarding whether
19 nor not he gave his permission of his consent is that he
20 didn't actively resist you when you did what the trooper
21 told you to do and that is go collect the samples?

22 A No. In the instances that I have drawn legal
23 samples, I confirm that before I stick someone that
24 they're okay with that.

25 Q That they okay ---

David MacAlhaney - Direct

1 A You're okay that I take this legal sample.

2 Q What the trooper asked you to do, correct?

3 A I'm not sure ---

4 Q I'm not trying to ---

5 A I'll tell you how I typically do it is I go in --
6 a trooper asks for a legal sample, I go in and I introduce
7 myself to the patient and let them know that I'm
8 understanding that you're agreeing to have a legal sample
9 drawn and then they say yes or no. And I draw if they say
10 yes.

11 MR. CHAMBERS: That's all the questions I
12 have.

13 MR. OVERBY: I have no further questions on
14 redirect, Your Honor.

15 THE COURT: Thank you. You may step down.

16 MR. OVERBY: At this time, Your Honor, I
17 would call Trooper David MacAlhaney to the stand.

18 THE CLERK: Please come to the stand to be
19 sworn in, place your left hand on the Bible and raise your
20 right.

21 DAVID MACALHANEY, having been duly sworn,
22 testified as follows:

23 Please state your name for the record.

24 THE WITNESS: David E. MacAlhaney.

25 DIRECT EXAMINATION

David MacAlhaney - Direct

1 BY MR. OVERBY:

2 Q Good afternoon, how are you doing?

3 A Fine, sir.

4 Q What is your present occupation?

5 A I am currently working for Greenville Technical
6 College in their police department.

7 Q What do you do for Greenville Technical College?

8 A I am an officer on campus and I cover the five
9 campuses in Greenville County.

10 Q And you work there extensive -- have you worked
11 there your entire career?

12 A No, I worked there since June of 2013 as I
13 retired from the highway patrol in December of 2012.

14 Q So you were formally employed by the South
15 Carolina Department of Public Safety, is that true?

16 A Yes.

17 Q How long were you a trooper for?

18 A Twenty-five years.

19 Q During your time as trooper, what kind of
20 training did you receive?

21 A I received training as far as accident
22 investigations, as far as speed measuring devices,
23 anything that can occur from a traffic accident or any
24 kind of traffic violation regarding a motor vehicle.

25 Q Was that through the South Carolina Criminal

David MacAlhaney - Direct

1 Justice Academy?

2 A It was.

3 Q Were you a trooper on the night of March 4, 2012?

4 A I was.

5 Q And were you the primary investigating officer in
6 this present case?

7 A Yes, I was.

8 Q Talk to me a little bit about what you observed
9 --

10 MR. OVERBY: Let me have marked as Court's
11 Exhibits 6 through 13.

12 (Photo's marked as Court's Exhibit No. 6
13 through 13 for identification.)

14 MR. OVERBY:

15 Q I'm going to have you look at what's been marked
16 as Court's Exhibit 6 through 13. What are those
17 photographs of?

18 A They're of the accident in which I responded to
19 at 291 and Worley Road in Greenville County.

20 Q They accurately represent and depict the accident
21 as you perceived it?

22 A Yes, it does.

23 Q What are some of your responsibilities when
24 you're out there on an accident scene investigation?

25 A Primary responsibility is to think of the roadway

David MacAlhaney - Direct

1 itself and actually get in there investigate, do what you
2 have to do, and try to clear the roadway in a timely
3 manner. Everything stems from trying to find out who and
4 place your driver's behind the wheel, find and locate any
5 witnesses who may have seen the accident, to get out and
6 take measurements, note the vehicles in the roadway. It's
7 just a lot of technical things that has to be done
8 depending in each accident. Some accidents take a lot
9 longer and other accidents you can do pretty quickly.

10 Q Was this such an accident that you could do
11 quickly?

12 A No, it was not.

13 Q What about this accident that it took time to
14 investigate?

15 A It was a major accident. It was an accident
16 where an individual in one vehicle was hurt really really
17 bad. It was a situation where I didn't know at that point
18 how it was going to end. It was a big debris field on the
19 highway. And, of course, in Greenville County at that
20 time of the day 291 north was a busy road. It was a lot
21 of traffic wanting to come through, and trying to maintain
22 a clean field of investigation and keep that traffic at
23 bay.

24 Q What was the importance of the integrity of clear
25 field of investigation?

David MacAlhaney - Direct

1 A To preserve any evidence that maybe on the
2 roadway. Pictures have to be taken, everything has to be
3 noted, and you can't have traffic running through and
4 investigation field.

5 Q What's the importance of marking all the vehicle?

6 A So at a later day place those vehicles back on
7 the scene where they were.

8 Q What do you mean by that?

9 A I have read paint in the trunk of my car. I get
10 it out and I got to the wheels and mark the wheel
11 locations in a certain fashion to show angle of how the
12 vehicle is sitting in the roadway.

13 Q Do you make a determination at the point of
14 impact?

15 A I do.

16 Q Important to do so?

17 A It is.

18 Q Why is that?

19 A Point of impact tells you exactly where the two
20 vehicles collided and places in a certain area in the
21 roadway.

22 Q If you step down real quickly because I want to
23 show you some photographs and ask you if they are fair and
24 accurate of the accident scene.

25 Can you tell me whose vehicle that is?

David MacAlhaney - Direct

1 A That is Mr. Suddeth's vehicle.

2 Q And who is Mr. Suddeth in this case?

3 A He's the individual that was traveling on 291
4 south and he was struck by an on-coming vehicle in his
5 lane.

6 Q Were you around the vehicle, his vehicle at all
7 during this time?

8 A I was.

9 Q Do you have any recollection of what his
10 condition was?

11 A His condition was poor. He suffered great bodily
12 injury.

13 Q Does that fairly and accurate depict his vehicle
14 from another angle?

15 A It does.

16 Q I see you have multiple emergency service units
17 out there, correct?

18 A Correct.

19 Q This photograph which is Court's Exhibit No. 7,
20 what is that a photograph of?

21 A The accident scene 291 north.

22 Q Court's Exhibit No. 9.

23 A That is as well. That's the actual vehicle of
24 Mr. Suddeth.

25 Q Do you remember if Mr. Suddeth got out of his

David MacAlhaney - Direct

1 vehicle voluntarily?

2 A No, he did not.

3 Q What happened in that sense?

4 A He had to be extricated from the vehicle by the
5 fire department and it took some time to extract him from
6 the vehicle.

7 Q Was he the only person injured in this accident?

8 A No.

9 Q Who else was injured?

10 A Mr. McCall was injured as well.

11 Q What is this a photograph of?

12 A Mr. McCall's vehicle.

13 Q And Court's Exhibit No. 11.

14 A That again is Mr. McCall's vehicle.

15 Q No. 13.

16 A That too is Mr. McCall's vehicle.

17 Q Was this a simple accident to investigate?

18 A No, it was not.

19 Q You can have a seat.

20 Now, the photographs in question, you said
21 that they do fairly and accurately represent the accident?

22 A Correct.

23 Q You had an opportunity to view these previously,
24 correct?

25 A Correct.

David MacAlhaney - Direct

1 Q I'd like to bring you notice to the time stamps
2 that's involved in the bottom right of the photographs.
3 Is that the correct accident date?

4 A No.

5 Q So that's actually a misprint of the particular
6 time and date?

7 A It is.

8 Q But you have personal knowledge of the accident?

9 A I do.

10 Q You were there and you recognize the photographs
11 as the scene?

12 A Yes.

13 Q Now, how long does an average accident scene take
14 to investigate?

15 A It varies like I say from the severity of the
16 accidents. I have investigated accidents as quick as a
17 half hour and some have taken several hours.

18 Q Is it possible they always stay with the
19 defendant or the accused in a particular situation during
20 these times?

21 A Not all the time.

22 Q Was that the case here?

23 A Yes.

24 Q And why is that?

25 A The defendant was transported by EMS from the

David MacAlhaney - Direct

1 scene as Mr. Suddeth was too. It was a very minimal time
2 on the scene itself to do any conversations with either
3 one of them.

4 Q And during this time you said that you're marking
5 the scene, did you mark the scene in this case?

6 A I did.

7 Q You identified the drivers?

8 A I did.

9 Q You were securing the scene?

10 A Yes.

11 Q Did you have 20 people in order to direct for you
12 to do these jobs?

13 A We had a couple of more units from highway patrol
14 there. There was fireman there. Sometimes I have people
15 volunteering to ask me if it's something they can do with
16 the fire departments and agencies. In this case the
17 investigative part had to be done on my part and the
18 troopers that were out there with me.

19 Q Did that include interviewing witnesses?

20 A It did.

21 Q How many witnesses did you interview in this
22 case?

23 A I had two witnesses.

24 Q Approximately how long did those witnesses take?

25 A They took from start to finish I had to have the

David MacAlhaney - Direct

1 written statements as well as in car video, statements,
2 verbal statements. I'd say it took a half hour each.

3 Q What time do you remember getting on the scene?

4 A Can't remember the exact time it was. I can't
5 remember the exact time I got on the scene.

6 Q I'd like to show you this report here. I want to
7 show you this document. What is that document?

8 A This is the call history from the CAD of the
9 highway patrol.

10 Q Are you identified on that report?

11 A I am.

12 Q What is your call number?

13 A C47.

14 Q Based off that CAD report, does it refresh your
15 recollection about what time you arrived on the accident?

16 A 18:12 according to my radio traffic.

17 Q Now, after you finished talking to the witnesses
18 and after you finished investigating the scene, making
19 sure that everything was secure, you said the driver's had
20 already been transported.

21 A Yes.

22 Q Did you eventually go and try to speak with
23 Mr. McCall?

24 A I did.

25 Q Do you remember about what time that was?

David MacAlhaney - Direct

1 A Exact time I would probably have to refer to the
2 CAD to find that out. I would say it was a couple of
3 hours maybe, an hour and a half. I'm just guessing.

4 Q I'd like to show you what I've had marked as
5 Court's Exhibit No. 14.

6 (Report marked as Court's Exhibit No. 14 for
7 identification.)

8 BY MR. OVERBY:

9 Q Can you identify what Court's Exhibit No. 14 is?

10 A This is implied consent for felony DUI.

11 Q Now, in this particular case -- does that
12 document show you what time that you began talking to
13 Mr. McCall?

14 A No.

15 Q Well, let me ask you this, is that your
16 signature?

17 A That's my signature.

18 Q What date did this occur?

19 A March 4 of 2012.

20 Q Let me show you another document to try to assist
21 you with that. This has already marked as a Court's
22 Exhibit 3. What time did you arrest the defendant? Does
23 that show you what time you arrested the defendant?

24 A 20:13.

25 Q So you don't get there until 20:13 or you are at

David MacAlhaney - Direct

1 the hospital at 20:13?

2 A Correct.

3 Q Talk to me about what happened when you were at
4 the hospital?

5 A When I got to the hospital I asked the front desk
6 about the two individuals involved in the wreck and she
7 directed me back into the ER. Mr. Suddeth was in the
8 trauma bay, Mr. McCall was in critical care. The trauma
9 bay is kind of -- you can't really talk to anybody in the
10 trauma bay, so I immediately went to the critical care
11 section where I found Mr. McCall.

12 Q What did you notice about Mr. McCall on arrival?

13 A I noticed, of course, he had some injuries from
14 the wreck. He was laying on a stretcher, I think, in the
15 hallway of the critical care section. He was coherent, he
16 could talk, he could speak. I asked him about the
17 accident and he advised me that his vehicle went across
18 the roadway and he had no brakes. He told me he had no
19 calipers on the wheels so he had no brakes. And I asked
20 him if he had anything to drink, any alcohol to drink, as
21 I did observe cans in his vehicle. He told me that he
22 didn't drink, he didn't have anything to drink.

23 Then I asked him if he had taken any kind of
24 drugs, and he told me that he had taken some prescription
25 drug.

David MacAlhaney - Direct

1 Q When you conduct an accident investigation, you
2 determine the point of impact correct?

3 A Correct.

4 Q Was Mr McCall's statement any different really
5 from what your own investigation concluded?

6 A No.

7 Q Is it in fact a dereliction of duty to cross the
8 center line in a driving case?

9 A It is.

10 Q At that time what did you know about
11 Mr. Suddeth's condition?

12 A His condition I went back to the trauma bay and
13 all I could see was him laying in the trauma bay. I
14 couldn't really determine anything other than what I was
15 told by the nurses and the doctor I spoke to I asked him
16 about his probability of survival and he told me at that
17 point he didn't know. He said he couldn't say.

18 Q So it was apparent to you that he was pretty
19 badly injured?

20 A Definitely bad.

21 Q Now, you stated that the defendant told you he
22 did not drink. Did you observe an order of alcohol
23 beverage on him?

24 A No.

25 Q What did you observe about Mr. McCall?

David MacAlhaney - Direct

1 A I observed that he wasn't responding to me in the
2 way that I would feel as normal in concurrence with the
3 amount damage and injury that he had in the wreck. His
4 speech wasn't totally true and plain. If I remember
5 correctly, his eyes were dilated to some degree. That
6 along with his actions and his admission to taking
7 prescription drugs, I felt it necessary to go further with
8 the investigation.

9 Q When you say necessary to go further you mean
10 place him under arrest?

11 A Place him under arrest and advise him of his
12 implied consent.

13 Q Prior to having that conversation with Mr. McCall
14 you wouldn't have necessarily come to that conclusion?

15 A That's correct.

16 Q I'm going to show you Court's Exhibit No. 14.
17 Talk about that advisement?

18 A This is the driving under the influence
19 advisement. This is the advisement that you read to
20 someone that you will charge him or the felony DUI law and
21 what you have to tell them as far as their rights.

22 Q What makes that advisement different from your
23 standard consent advisement?

24 A This advisement informs them that they're going
25 to have to admit to a test and that test usually is a

David MacAlhaney - Direct

1 result of blood draw and they really don't have a choice
2 in the matter.

3 Q Was it practical for you to go to the LEC and do
4 a breathalyzer test?

5 A No.

6 Q Would it have shown anything?

7 A No, because he told me there was no alcohol nor
8 did I detect any alcohol.

9 Q When you read that to him, how close were you to
10 him?

11 A I was standing right next to him when he was
12 laying on the stretcher.

13 Q And you read it in its totality to him?

14 A I did.

15 Q Did he appear to understand that?

16 A Yes, I asked him if he understood and he replied
17 yes.

18 Q Did you hand him a copy of this advisement?

19 A I did.

20 Q Did you observe him sign this advisement?

21 A I did. I actually had to hold it above him and
22 he signed laying on his back.

23 Q Once you had made that advisement, did you ask
24 him if he was going to provide a sample?

25 A Yes.

David MacAlhaney - Direct

1 Q And what did he say in response?

2 A He told me sure I'll give you a sample.

3 Q Did he ever indicate to you he would not provide
4 you with a sample?

5 A No, he did not.

6 Q What did you do after that point?

7 A Then I tried to locate a nurse to draw the
8 sample.

9 Q The nurse that testified earlier today?

10 A She is the one.

11 Q Now, during this process, were you present?

12 A Yes.

13 Q And as part of this process you observed this
14 test being conducted?

15 A I did.

16 Q Now, was there any indication during that time
17 frame that he would not submit to that test at that point?

18 A No, there was not.

19 MR. OVERBY: I have one final Court's Exhibit
20 I'd like to mark and that's No. 15.

21 (Photograph marked as Court's Exhibit No. 15
22 for identification.)

23 MR. OVERBY:

24 Q You were with this Mr. McCall during the entire
25 time, correct?

David MacAlhaney - Cross

1 A Correct.

2 Q You had the opportunity to personally observe
3 him?

4 A I did.

5 Q I'm going to show you what's been marked as
6 Court's Exhibit No. 15. It's a photograph of Mr. McCall,
7 correct?

8 A Correct.

9 Q Does it fairly and accurately represent
10 Mr. McCall's appearance when you saw him at the hospital?

11 A It does.

12 Q Thank you.

13 MR. OVERBY: I have no further questions.

14 CROSS-EXAMINATION

15 BY MR. CHAMBERS:

16 Q Trooper MacAlhaney, from the time you arrived the
17 fire department were already on the scene; is that
18 correct?

19 A That's correct.

20 Q They had been there for some time, they had some
21 difficulty with Mr. McCall and Mr. Suddeth getting them
22 out of their vehicles; is that correct?

23 A I know they did Mr. Suddeth, but Mr. McCall I
24 think was out when I got there.

25 Q Were you aware that the fire department had to

David MacAlhaney - Cross

1 use hydraulic equipment in order the extricate Mr. McCall
2 from his vehicle?

3 A I can't recall if they did or didn't.

4 Q When you arrived Mr. McCall was being treated by
5 EMS?

6 A Yes.

7 Q And that picture that we saw a few minutes ago
8 shows damage to both vehicle, correct?

9 A Correct.

10 Q You didn't get an opportunity to talk to
11 Mr. McCall at the accident scene, correct?

12 A That's correct.

13 Q A couple of hours later when you were finished
14 there, that's when you went Greenville Memorial?

15 A Right.

16 Q Is it your experience that trauma patients
17 generally go to Greenville Memorial because they had at
18 trauma center there?

19 A Usually. I guess we are fortunate to have a
20 trauma center and I guess most people end up there in a
21 trauma situation.

22 Q So by the time you got there, Mr. McCall who is
23 in critical care and he was lying on a stretcher; is that
24 correct?

25 A Yes, sir.

David MacAlhaney - Cross

1 Q He wasn't up walking around when you got there?

2 A No, sir.

3 Q He did not get up during the time that you were
4 talking to him, did he?

5 A No, sir.

6 Q He remained supine on the stretcher while you
7 talked to him the entire time?

8 A Yes, sir.

9 Q You indicated that there was no evidence what so
10 ever that he had been using alcohol?

11 A That's correct.

12 Q And you said he did have injuries?

13 A He did.

14 Q Were you aware among the injuries is that he hit
15 his head with such force that he had lost several of his
16 teeth?

17 A Seems like I do recall teeth missing.

18 Q And was that evident to you when you were talking
19 to him?

20 A Yes, sir.

21 Q And that would also provide some evidence that he
22 had hit his head and had suffered some trauma to his head
23 during his accident; is that correct?

24 A That could be true.

25 Q And during the course of this discussion, he told

David MacAlhaney - Cross

1 you he hadn't had anything to drink but he did tell you
2 that he had taken some prescription medication?

3 A He did.

4 Q That is the statement he made prescription
5 medication?

6 A Yes, sir.

7 Q So you're saying your probable cause for arrest
8 for felony DUI at least as to the impairment issue is he
9 didn't seem right and he told you he took prescription
10 medication, right?

11 A Not totally. It stems to from my investigation o
12 the scene.

13 Q Please articulate to me, and I'm really only
14 interested in the impairment issue because we'll concede
15 of course that there was great bodily injury in this
16 accident, so as far as the impairment goes, what was your
17 probable cause?

18 A My probable cause for impairment like I said his
19 actions didn't seem right and it wasn't actions consistent
20 with what his injuries appeared to be. As his admission
21 to taking prescription drugs as well as the way the
22 accident happened when he informed me he had no calibers.
23 I do know a little bit about cars and brakes and if you
24 don't have calibers then, of course, you have no brake
25 pads. That in no way, shape, form, or fashion indicates

David MacAlhaney - Cross

1 going to the opposite side of the roadway and hitting
2 another vehicle. So with all that collective, I come to
3 the conclusion that there was sufficient evidence to take
4 a blood draw.

5 Q You say he didn't act right but you say he was
6 lying on a stretcher this entire time.

7 A True.

8 Q And he had suffered head trauma?

9 A True.

10 Q And he was missing teeth?

11 A Yes, sir.

12 Q And he had been in a horrific accident?

13 A Yes, sir.

14 Q So what you just articulated that is the extent
15 of your probable cause?

16 A Yes, sir.

17 Q So after that short discussion with him you said,
18 well, I'm placing you under arrest and that's when you
19 found a nurse to do a blood draw; is that correct?

20 A Correct.

21 Q You said that you read the rights to him and this
22 is, you say, his signature right there, this scribble
23 that's on the line?

24 A Yes, sir.

25 Q And you say he indicated that he would provide

Don Bannister - Direct

1 samples?

2 A Yes.

3 MR. CHAMBERS: That's all I have.

4 THE COURT: Any follow up?

5 MR. OVERBY: No, Your Honor. I have no
6 further questions.

7 THE COURT: Thank you, sir, you can step
8 down.

9 Let's take a five or ten minute break.

10 (Brief break.)

11 Okay. Does the State have any other
12 witnesses to call to the stand?

13 MR. OVERBY: Yes, sir. The State calls First
14 Sergeant Don Bannister to the stand.

15 THE CLERK: Sir, would you step up to the
16 stand to be sworn. Place your left hand on the Bible and
17 raise your right.

18 DON BANNISTER, having been duly sworn,
19 testified as follows:

20 Thank you. Would you please state your name
21 for the record.

22 THE WITNESS: Don Bannister.

23 DIRECT EXAMINATION

24 BY MR. OVERBY:

25 Q How are you today?

Don Bannister - Direct

1 A Doing well, you?

2 Q Fine. Where are you employed?

3 A South Carolina Highway Patrol.

4 Q How long have you been employed with the South
5 Carolina Highway Patrol?

6 A A little over 24 years.

7 Q And what is your duty and responsibility
8 presently at the South Carolina Highway Patrol?

9 A I'm the first sergeant for South Carolina so that
10 makes me the post commander.

11 Q As part of being the post commander, what sort of
12 responsibilities do you have?

13 A Well, I'm responsible for most everything. I do
14 scheduling, assign equipment and I oversee all the
15 supervisors and troopers that work in this county.

16 Q Do you work accidents?

17 A Yes, sir.

18 Q Through the course of your career, how many
19 accident scenes you worked?

20 A I couldn't tell you. It's been a lot.

21 Q Hundreds?

22 A Yes.

23 Q Did those accident scenes range in severity?

24 A Yes, sir, they did.

25 Q What are some of the things that are most

Don Bannister - Direct

1 concerning on an accident scene in general?

2 A On a very severe accident scene one of the things
3 is going to be scene security and making sure that
4 civilians that don't need to be in the scene aren't
5 walking through it. You want to make sure the traffic is
6 moving. In this particular case SC 291, you can't have
7 traffic just stand still. You're going to have to detour
8 traffic in some version so you need to detail people to
9 that. You want to make sure that people are gathering
10 evidence, photographing, taking statements.

11 If you have somebody transported to the
12 hospital you're going to want to send another trooper to
13 try to determine what they're injuries may be and those
14 are just some.

15 Q Why do you go through all of these things?

16 A To be sure that you're accurate.

17 Q Why is it important to be accurate?

18 A Of course, you don't want to charge somebody
19 falsely. You want to make sure that you're making the
20 right charge and that you're completing the investigative
21 steps to substantial the charge you're contemplating.

22 Q Do you have a duty to the public as well?

23 A Yes, sir.

24 Q It's important to get it right.

25 A Yes, sir.

Don Bannister - Direct

1 Q Now, the tasks that you're talking about you ran
2 through them in a few minutes, but in reality how long
3 does it take to accomplish some of these items?

4 A At a severe collision scene, it's going to range
5 especially with MAIT being involved, you're probably
6 looking at a minimum of being able to clear that scene in
7 three to five hours.

8 Q Who is MAIT just for the record?

9 A That's the reconstructive arm of our agency, of
10 our department. They come out and assist with severe
11 collision, doing vehicle dynamics and examinations of
12 vehicles. Also they do -- they can recreate the scene on
13 computer, plotting points, surveying and those matters.

14 Q Sounds like a lot of people have to have a lot of
15 jobs?

16 A Yes, sir.

17 Q What kind of resources do you have to accomplish
18 those things?

19 A Most times they're very limited. In the time
20 that I've been a first sergeant we've ranged anywhere from
21 35 to 42 troopers and I've been a first sergeant since
22 September of 2010. Back in the early '90s Greenville had
23 65 troopers stationed here and it's very much small than
24 that now. So a normal crew is going to have anywhere
25 between six to eight.

Don Bannister - Direct

1 Q So you don't have 42 troopers at one time at your
2 disposal?

3 A No, sir.

4 Q Six to eight?

5 A Yes, sir.

6 Q Now, a major accident like this, how many people
7 is that going to involve?

8 A You can very well extinguish that number pretty
9 quickly. You can put four people on the scene and keep
10 them busy the entire time while you're detailing another
11 two to maybe go to the jail to get warrants if you need
12 those or go to the hospital and then you still have
13 prioritize and use your remaining troopers to cover the
14 rest.

15 Q Ideally in an investigation, when do you want to
16 obtain a sample from an individual?

17 A As soon as possible.

18 Q Why is that?

19 A To make sure it's accurate. Especially in DUI
20 cases it's well known we're dealing with fleeting
21 evidence.

22 Q When you have to go and obtain a search warrant,
23 talk a little bit about that procedure?

24 A To obtain a search warrant, you're going -- most
25 times we're going to go to the jail. If it's after 5:00

Don Bannister - Direct

1 we're going to have to go to the jail and sit down with
2 the clerk to get one typed up. And then you're going to
3 have to find a judge. If a judge is not in, you start
4 making phone calls to the supervisor to find a judge to
5 let them review it because we don't have the online
6 system, call in type system, you're going to call them and
7 take that warrant to them to let them review it to sign
8 it.

9 Q When these accidents or collisions happen, there
10 are still other happening around the county?

11 A Yes, sir.

12 Q You have to handle those, don't you?

13 A Yes, sir.

14 Q So you described a little bit about the warrant
15 process, about how long does that take to get that done?

16 A In a perfect scenario, you're looking at an hour,
17 hour-and-a-half. If you have to hunt a judge or wait on
18 clerk -- the warrants are set up on through the county
19 system so we don't have access to it until we get there.
20 You're looking at probably about two hours or maybe a
21 little more.

22 Q You said that usually you would go to the jail if
23 you could?

24 A Yes.

25 Q Is the person you are looking to obtain something

Don Bannister - Direct

1 from always at the jail at the same time?

2 A No, he could very well be at the hospital.

3 Q How long is it from the jail to Greenville
4 Memorial, do you know?

5 A About 15 minutes to travel down there from the
6 jail and of course when you get to the hospital with the
7 warrant depending on where the subject may be, you're
8 going to have to advise the hospital to request a blood
9 draw or a urine sample or whatever the case might be.
10 They're not standing waiting for us at the door so once
11 they finish whatever task they're currently on, then
12 they'll get to you.

13 Q That doesn't include the time that you're out
14 there where ever that accident scene might occur?

15 A Yes, sir, it doesn't include that.

16 Q Now, you said that you been with the South
17 Carolina Highway Patrol for 25 years, correct?

18 A Yes, sir.

19 Q Have you ever been the investigating lead officer
20 on a case?

21 A Yes, sir.

22 Q Have you ever obtained a search warrant for an
23 individual's blood in a great bodily injury accident?

24 A Up to about two years ago with this Missouri
25 case, no, we didn't because the law allows us to have that

Don Bannister - Direct

1 draw. 2946 states that we can get it, but there was some
2 question as to whether we were still able to do that
3 constitutionally. Now, from about late 2013, beginning of
4 2014 we do try to obtain search warrants now for blood or
5 urine.

6 Q But you didn't start at the time of this
7 accident?

8 A No, sir. The law allows us to retrieve those
9 samples.

10 Q And the reason you started obtaining search
11 warrants is because of this McNeeley case; is that
12 correct?

13 A Yes, sir.

14 Q Why is that?

15 A So we don't run into any issues pertaining to
16 what you spoke to earlier.

17 Q How much does that delay the process of obtaining
18 these samples?

19 A Just like I said, ideally it's going to take you
20 an hour, hour and a half, to get the warrant if everything
21 is in place and get it to the hospital. It could take you
22 as much as two and a half, three hours, to get it done,
23 served and get the sample.

24 Q Would it be fair to say you relied on this
25 statute prior to this whole case coming out?

Don Bannister - Direct

1 A Yes, sir.

2 Q Sergeant Bannister, you don't have probable cause
3 to obtain a search warrant right out of the gate just
4 because of an accident, do you?

5 A No, sir.

6 Q How long does it take you to figure that aspect?

7 A Again, that's going to depend on what's on the
8 scene. As an investigator you're going to start
9 determining how this happened, what the contributing
10 factors were. If a party is still on the scene, then, of
11 course you can talk to him, observe him, put him through
12 rounds of tests if you deem it necessary. But if you have
13 to go to the hospital to start determining those things,
14 of course, that's going to increase your time frame again.
15 That's why a lot of time, if resources are available,
16 we'll send an officer to the hospital to try to observe
17 some of those things and to let us know what we're dealing
18 with.

19 Q Not everybody is necessarily at the same place at
20 the same time.

21 A Exactly.

22 Q I have no further questions for you. Answer any
23 questions Mr. Chambers may have.

24 MR. CHAMBERS: I don't have any questions,
25 Your Honor.

Wes Hiatt - Direct

1 THE COURT: Thank you, sir. You can step
2 down.

3 MR. OVERBY: At this time, the State would
4 call Office Wes Hiatt to the stand.

5 THE CLERK: Please come up to the stand to be
6 sworn. Place your left hand on the Bible and raise your
7 right.

8 WES HIATT, having been duly sworn, testified
9 as follows:

10 Thank you, you may be seated. Please state
11 your name for the record.

12 THE WITNESS: Sergeant Wes Hiatt.

13 DIRECT EXAMINATION

14 BY MR. OVERBY:

15 Q Sergeant Hiatt, where are you employed?

16 A South Carolina Highway Patrol.

17 Q How long?

18 A Same amount of time as First Sergeant Bannister.

19 Q He beat you a little in time there. Do you take
20 that personally?

21 A He's my boss.

22 Q What are some of your current duties and
23 responsibilities?

24 A Mostly I have administrative duties right now and
25 all of the paperwork and I also oversee shift supervisor

Wes Hiatt - Direct

1 on two shifts and also act as a shift supervisor when I
2 don't have a corporal working.

3 Q About how many troopers do you have under your
4 command at any given time?

5 A It varies.

6 Q Let's start generally?

7 A May be 20, it varies.

8 Q Were you in this role on March 4, 2012?

9 A Yes, I was.

10 Q Now, you said that you are primarily the shift
11 supervisor. Do you ever go out on an active scene?

12 A Quite frequently.

13 Q Why is that?

14 A Whenever I get called to an accident scene or any
15 kind of scene, it's something that's pretty serious.

16 Q Were you called to this accident scene?

17 A Yes, I was.

18 Q Were you the first person to arrive from the
19 Highway Patrol?

20 A I think I was. I was at the office which is not
21 too far away from there.

22 Q When you get there, what are some of the duties
23 of a scene supervisor?

24 A First of all make sure when I pull up to find our
25 drivers, make sure we know who was driving each car,

Wes Hiatt - Direct

1 secure the scene. Basically and see what I got, see which
2 vehicle I think was at fault, secure our drivers secure
3 the scene, make sure it's safe, make sure I got personnel
4 to come into the scene to help with the investigation.

5 Q But you quite often are not the primary
6 investigating officer in most cases, correct?

7 A No.

8 Q But you said one of your duties is to obtain
9 manpower?

10 A That's correct.

11 Q Do you know on the night of this collision how
12 many people you had under your control at that time?

13 A At that time we had a day shift which is from 7 a
14 to 7 p and then we have a split shift which is 3 p to 3 a.
15 I think at that time I had a total of nine people working
16 combined with the seven and then my 3 to 3 people.

17 Q And during that particular time frame, do you
18 know about how many people you had working that scene?

19 A I think I originally called six but we were busy
20 that day and I think we ended up with 5 on the scene.

21 Q And other emergency personnel was out there as
22 well?

23 A Yeah, I couldn't count how many EMS.

24 Q Now, how long did it take to deal with this
25 accident scene?

Wes Hiatt - Direct

1 A I don't know at that time ---

2 Q Minutes?

3 A Hours because in this case I alerted the MAIT
4 team and they come from different counties. It takes a
5 good while to get there and once they get there, they
6 investigate the scene.

7 Q Was it heavy traffic scene?

8 A Heavy. Mostly that's where my manpower went too
9 and that's traffic direction and we had another incident
10 on the scene where we had to arrest somebody so one of my
11 men went to take care of that.

12 Q Did you have the opportunity to observe the
13 defendant in this case?

14 A Yes, I did.

15 Q Where did you observe him?

16 A When I first got there, he was entrapped in his
17 case and basically being entrapped, they had to pop his
18 door with a door pop which is simple extraction from his
19 vehicle.

20 Q Do you know what they had to do with Mr. Suddeth?

21 A Mr. Suddeth he was severely entrapped. It was a
22 long extrication.

23 Q Was that the only time you observed him was when
24 he was entrapped in his vehicle?

25 A No.

Wes Hiatt - Direct

1 Q What else did you observe?

2 A While he was in his vehicle I did notice there
3 was some beer cans in the car which led me to believe a
4 lot of empty beer cans he may be drinking alcohol.

5 Q What did you do after that?

6 A After that I think Trooper MacAlhaney came up and
7 I said there may be alcohol involved in this collision. I
8 said there were beer cans in the car. I went back to the
9 ambulance. Usually when you get them in the ambulance
10 usually you can smell the alcohol. I went into the back
11 of the ambulance and talked to the defendant. As I was
12 talking to him, he had his eyes closed. He had a mouth
13 injury. I asked him what happened. He said his brakes
14 failed.

15 While I was talking to him he would close his
16 eyes and he wouldn't answer your question. He opened his
17 eyes and they were wide open. His eyes had just this wild
18 look to them, dilated.

19 Q Was he in custody at that time?

20 A No, he wasn't. I did not smell any alcohol at
21 that time so after I exited the ambulance I told Trooper
22 MacAlhaney this guy seems to be under the influence of
23 some type of drug.

24 Q But at that point you hadn't placed him under
25 arrest?

Wendy Bell - Direct

1 A No.

2 Q You said you had an opportunity to observe the
3 defendant.

4 A That's correct.

5 Q I'm going to show you what's been marked as
6 Court's Exhibit No. 15. Does that fairly and accurately
7 depict your observation of the defendant on the scene at
8 the time?

9 A That's correct.

10 Q I have no further questions. Please answer any
11 questions the defense may have.

12 MR. CHAMBERS: I don't have any questions.

13 THE COURT: Thank you. You may step down.

14 MR. OVERBY: At this time the State would
15 call Wendy Bell to the stand.

16 THE CLERK: Please place your left hand on
17 the Bible and raise your right.

18 WENDY BELL, having been duly sworn, testified
19 as follows:

20 Thank you. You may be seated. Please state
21 your name for the record.

22 THE WITNESS: Wendy Bell.

23 DIRECT EXAMINATION

24 BY MR. OVERBY:

25 Q Good afternoon, Captain Bell, how are you?

Wendy Bell - Direct

1 A I'm fine.

2 Q Where are you employed?

3 A I am employed by the South Carolina Forensic
4 Services Laboratory.

5 Q What are some of your duties and responsibilities
6 in the forensic services lab?

7 A I am currently the captain and I oversee the
8 forensic operations unit which is all the science units in
9 the laboratory, physical science base. So that would be
10 DNA, toxicology, trace evidence, drug analysis and implied
11 consent. I've employed at SLED since 1998 and my
12 background is in toxicology.

13 Q And talk a little bit about your background in
14 toxicology.

15 A I started at '98 as a bench toxicologist and I
16 worked on the bench doing case work for about 10 or 11
17 years. During that time I was made technical leader of
18 the department so I oversaw all protocols and policies of
19 the department. I oversaw training and in 2007 I was made
20 supervisor of the drug analysis department and then in
21 2011, due to budget cuts, I was made co-lieutenant of the
22 drug analysis and the toxicology departments. So I had
23 two jobs. I was the chief toxicologist until I was named
24 this current position as captain about a year and a half
25 ago.

Wendy Bell - Direct

1 Q A little bit about your education, do you have
2 any degrees?

3 A I have a bachelor's of science in chemistry for
4 Furman University and I have a phd in analytical chemistry
5 from the University of South Carolina.

6 Q Now, you said that you supervise toxicology
7 correct?

8 A Yes, they're one of the units that I supervise.

9 Q And you said you were a bench toxicologist at one
10 point?

11 A Correct. That means actually doing the work.

12 MR. CHAMBERS: Your Honor, I'm just curious
13 as to what the solicitor is proffering this witness for in
14 regard to the motion. I understand we are in the motion
15 phase at this point and it would seem to be irrelevant.

16 MR. OVERBY: Mr. Chambers has raised as part
17 of his constitutional argument that the dissipation of
18 alcohol by in and of itself and presumable the same as the
19 dissipation of other drugs that are involved in a person's
20 system to which this witness will clearly testify that is
21 not the case.

22 THE COURT: Why don't you ask her that
23 question directly.

24 MR. OVERBY: Very well, Your Honor.

25 BY MR. OVERBY:

Wendy Bell - Direct

1 Q Tell me a little bit about the dissipation of
2 other substances than alcohol in a person's drug screen?

3 A Certainly. Trying not to get too technical,
4 alcohol follows very simple elimination in the body. It's
5 called zero order kinetics so that means thousands of
6 people have been tested and of those thousands there's a
7 very narrow average elimination rate for all individuals.
8 So when a person consumes a certain amount of alcohol and
9 they hit a peak level, over time we know that they
10 eliminate at a standard rate down to the point where they
11 have no more in their body.

12 Other drugs are not that simple. They follow
13 what's called first order elimination and it gets very
14 complicated. As soon as you absorb anything in the body,
15 your body immediately tries to start metabolising it and
16 eliminating it out. Some drugs stay in the body for days,
17 other are very fleeting and eliminated rapidly. It really
18 depends on the substance the person had ingested and
19 because of that it is very complicated to do toxicology.
20 We have to be concerned about all drugs and how quickly
21 they are metabolized or how long they may stay in a
22 person's body.

23 Q And as part of SLED, you are requested frequently
24 in accidents to do these toxicology reports, right?

25 A Yes. The toxicology department at SLED is the

Wendy Bell - Direct

1 only toxicology department in the State that does this
2 type of work. We spend half of our time doing death
3 investigation and half doing DUI investigation. So we
4 perform analysis on approximately 3000 DUI cases a year.

5 Q How important is it to get a timely sample?

6 A You want to have a sample taken as close to the
7 incident as possible because that is going to be the most
8 accurate as to what was happening inside the person at the
9 time of the accident.

10 Q Is it feasible for a particular narcotic that was
11 ingested out of a person's system even before a sample is
12 obtained?

13 A There are certain drugs that do eliminate quite
14 rapidly and yes before they can even be taken to the
15 hospital.

16 Q Does that include prescription drugs?

17 A It can include some prescription drugs, yes.

18 Q Would you give us a small spectrum of the kinds
19 of drugs that you're talking about in terms of
20 dissipation?

21 A Sure. One of the best commonly, elicited used
22 drugs in our state is marijuana so the active ingredient
23 in marijuana is tetrahydrocannabinol or THC. When someone
24 smokes a joint they get a very rapid high within the first
25 10 or 15 minutes of smoking it and within 30 to 45 minutes

Wendy Bell - Direct

1 after smoking it the parent substance is almost impossible
2 to detect in their blood. We can still detect the
3 metabolites, but the metabolites are inactive and they
4 deposit into the fat of the body. People know if you
5 smoke marijuana regularly, someone can have a positive
6 drug screen for marijuana for the metabolites up to a
7 month after.

8 So it's very important that we get the blood
9 quickly or we don't see that parent substance.

10 Q Can you detect that parent substance in a
11 urinalysis?

12 A No. It's so rapidly metabolized that all we see
13 on the urine is the inactive metabolite. Cocaine that's
14 another substance that rapidly metabolized but it's longer
15 than marijuana. In toxicology we call it half lives. A
16 half life is the time it takes for that substance to be
17 cut in half in your body. For cocaine it varies very
18 widely. It's from 30 minutes to two hours so if a person
19 has a rapid elimination rate of 30 minutes and the
20 accident occurs and you don't get a sample for three hours
21 later, that's six half lives that have passed.

22 There are other substances we see that are a
23 little longer. Morphine, we see, has a two hour half
24 life. Some of the benzodiazepines can have lives ranging
25 anywhere from one hour up to 18 hours.

Wendy Bell - Direct

1 Q Now, when are benzodiazepines used for?

2 A That's a class of drugs used for a variety of
3 things from anxiety to anti depression. Some of the trade
4 names are Zoloft, Xanax.

5 Q Those are prescription drugs?

6 A Yes.

7 Q And other prescription drugs might not follow
8 that same ---

9 A Anti-depressants are prescription drugs. Some
10 narcotics can be prescription drugs.

11 Q I have no further questions for you. Please
12 answer any questions the defense may have.

13 MR. CHAMBERS: I don't have any questions for
14 this witness, Your Honor.

15 THE COURT: Thank you. You may step down.

16 MR. OVERBY: Your Honor, I have no further
17 witnesses as to the motion that have been raised by the
18 defense. All I have is Jackson v. Denno.

19 THE COURT: Mr. Chambers, do you have any
20 witnesses to call.

21 MR. CHAMBERS: I put my client up very
22 briefly just to the consent issue.

23 THE COURT: Yes, sir.

24 Do you want me to advise him of his right to
25 remain silent before he takes the stand?

Wendy Bell - Direct

1 MR. CHAMBERS: Yes, Your Honor.

2 THE COURT: If you would, Mr. McCall, come
3 forward. I have a couple of questions for you before we
4 get started.

5 THE CLERK: Please place your left hand on
6 the Bible and raise your right.

7 TERRY MCCALL, having been duly sworn,
8 testified as follows:

9 Thank you. You may be seated. State your
10 name for the record.

11 THE COURT: Mr. McCall, I think it's
12 incumbent upon the Court to advise you of your right to
13 remain silent, your constitutional right against self
14 incrimination. As you probably know and as you've had the
15 opportunity to discuss with your attorney, you have a
16 right to remain silent guaranteed under the constitution
17 which means you could not and will not be compelled to do
18 or say or prove anything in this trial.

19 However, you can waive that right, you can
20 waive that privilege and you can testify on your own
21 behalf. You can make statements under oath but you do
22 understand that if you make statements under oath anything
23 that you say can be held against you, do you understand
24 that, sir?

25 DEFENDANT MCCALL: I do.

Terry McCall - Direct

1 THE COURT: Okay. For purposes of this
2 hearing you want to waive that right, sir?

3 DEFENDANT MCCALL: Yes, sir, I do.

4 THE COURT: Alright, Mr. Chambers.

5 DIRECT EXAMINATION

6 BY MR. CHAMBERS:

7 Q Do you remember talking to Trooper MacAlhaney at
8 Greenville Memorial Hospital?

9 A I remember seeing him and speaking with him.

10 Q When you spoke to him where were you?

11 A I was on a stretcher in the hallway, I think.

12 Q And how long had you be lying on the stretcher?

13 A Probably about 20 minutes.

14 Q And had you been carried there by the EMS?

15 A I was.

16 Q They had taken you into critical care as the
17 trooper said?

18 A They did.

19 Q Do you remember he talked to you and what he
20 talked to you about?

21 A He said, Mr. McCall, there are a lot of beer cans
22 in your car and I had told him that I found him and picked
23 him up because I collected them. And he said, you been
24 drinking and I said, no, sir, I don't drink. He said let
25 me smell your breath and I did and he said I don't smell

Terry McCall - Direct

1 anything on him and he told the nurse, he's not drinking.

2 Q Let me ask you specifically do you recall him
3 going over your implied consent rights with him, this
4 form?

5 A No, I don't.

6 Q Is that your signature at the bottom?

7 A No, sir, it's not.

8 Q Are you certain?

9 A I'm sure.

10 Q Do you remember a nurse when she was drawing
11 blood from you?

12 A I do and I don't. They draw it a couple of
13 times, I think.

14 Q They probably took blood when you first came in
15 for medical reasons; is that correct?

16 A I guess it was for medical reasons.

17 Q And do you remember signing this form?

18 A No, sir.

19 Q Is that your signature at the bottom?

20 A No, sir.

21 Q Are you certain of that?

22 A Yes, sir. I was unable to sign when I went into
23 the hospital, into the trauma.

24 Q Did you give consent to anybody to draw blood
25 from your for purpose of evidence gathering?

Terry McCall - Cross

1 A No, sir.

2 MR. CHAMBERS: That's all the questions I
3 have.

4 CROSS-EXAMINATION

5 BY MS. DRAWDY:

6 Q Mr. McCall, do you recall a lot of details about
7 being at the hospital?

8 A A lot of details?

9 Q Yes.

10 A A little bit.

11 Q I asked you if you recall a lot of details?

12 A Not a lot.

13 Q Tell me what you remember about being at the
14 hospital?

15 A Being at the hospital I was laying there with my
16 teeth busted out, my face busted up, my chest was hurting
17 and I was serious pain and I was asking for help.

18 Q They weren't helping you at the hospital?

19 A The lady was but I needed something for my mouth.
20 My mouth was killing me. My teeth had been broken out.
21 The air hurts, talking to someone makes it hurt.

22 Q You don't remember telling the trooper that you
23 had taken prescription drugs?

24 A Do I remember that?

25 Q Yeah.

Terry McCall - Cross

1 A I did tell him that I had taken something the
2 night before. I didn't take it while I was driving. I
3 would never do that.

4 Q Do you remember telling EMS that you had taken
5 Ativan?

6 A Yes, I do. I told them I had taken it the night
7 before but not while I was driving. I tried to be as
8 honest I as I could.

9 Q So you did tell them you had taken prescription
10 drugs, the trooper?

11 A I did tell the trooper that that I had taken it
12 the night before. I did.

13 Q Does your signature look the same when you are
14 upright signing as when you try to sign it lying down?
15 Would you expect it to look the same?

16 A Would you?

17 Q I'm asking you if you would.

18 A I really don't know. I never signed that way
19 before.

20 Q You didn't that way that night?

21 A What you mean?

22 Q You did not scribble on two documents that the
23 trooper gave you?

24 A No, ma'am.

25 Q You don't remember that?

Terry McCall - Cross

1 A No, ma'am. I don't how you can sign something
2 that's behind you and you don't know what it is.

3 Q I didn't say behind you, I said in front of you,
4 up above you ---

5 A No, I didn't sign that.

6 Q Would you expect your signature to look the way
7 you usually sign it?

8 A Always.

9 Q If you were doing it this way, you would expect
10 it to be equally legible?

11 A I would try to make it as good as I could.

12 Q You're saying that you were never advised of that
13 felony DUI advisement?

14 A No, ma'am.

15 Q You don't remember that?

16 A I don't remember that. He only spoke to me maybe
17 twice.

18 Q Do you remember talking to him about your brakes?

19 A No, I did.

20 Q You don't remember telling him you didn't have
21 brakes?

22 MR. CHAMBERS: Your Honor, I'm going to
23 object at this time because I believe it's beyond the
24 scope of my direct testimony.

25 MS. DRAWDY: It goes to his ability to

Terry McCall - Cross

1 remember things in general, Your Honor.

2 THE COURT: I'll grant you some latitude in
3 that regard.

4 BY MS. DRAWDY:

5 Q You don't remember telling him that?

6 A I'll tell you what I told him. I said, sir ---

7 Q No, sir, I asked him if you remember telling him
8 about the brakes?

9 A I said my brakes failed me, that's what I told
10 him. I had a seizure and I tried to stop and my brakes
11 failed me. That's what I told him. I have seizures.

12 Q We'll talk about that at the trial.

13 A Okay, Ms. Drawdy.

14 MS. DRAWDY: Nothing further.

15 MR. CHAMBERS: Nothing further.

16 THE COURT: Okay. Anything further from the
17 defense?

18 MR. CHAMBERS: Nothing further.

19 THE COURT: Alright, it's 1:25 now. Let's
20 adjourn and come back at 2:30. We can take up all the
21 Jackson v. Denno issues, but the court personnel needs to
22 go get lunch even if we don't.

23 MS. DRAWDY: We do.

24 THE COURT: Let's come back at 2:30 and we
25 will resume. What I will tell the jury pool to -- how

Terry McCall - Cross

1 long do you anticipate the Jackson v Denno? A half an
2 hour?

3 MS. DRAWDY: Let me ask Mr. Chambers.

4 THE COURT: You've only known him 30 years.

5 MS. DRAWDY: I'm also operating under very
6 limited sleep, Your Honor.

7 Several statements that the defendant made,
8 the facts and circumstances have been entered into the
9 records and I didn't know if Mr. Chambers wanted to cross-
10 examine witnesses on that. The statements in the hospital
11 and the statements in the ambulance, we would have to take
12 that testimony again. I don't know how you would like to
13 handle that.

14 MR. CHAMBERS: Your Honor, I'm willing at
15 this point -- I think that they have testified to the
16 statements that would come in. There wasn't any
17 questioning as to the voluntariness of those statements.
18 I think at one point somebody did ask the trooper if
19 Mr. McCall was in custody at that time. I believe we've
20 made sufficient record for purposes of Jackson v. Denno.

21 Obviously as a defense counsel, I'm not in a
22 position to waive it, but I'm being candid with the Court,
23 I'm not concerned with any statements that may have come
24 in. I would be willing to concede for the record that
25 they have established under the criteria under Jackson v

Terry McCall - Cross

1 Denno that those statements were made voluntarily.

2 MS. DRAWDY: And that he was not in custody
3 at the time.

4 MR. CHAMBERS: Yes.

5 THE COURT: So the two statements are this,
6 the first one I had taken prescription drugs, I presume is
7 one of them, and the other one was my brakes failed when I
8 hit the car in the on-coming traffic.

9 MS. DRAWDY: There were two statements to
10 that effect at the hospital and there were also similar
11 statements to Trooper Hiatt.

12 THE COURT: I understand. That's the subject
13 matter.

14 MS. DRAWDY: And then we have additional
15 statements that were made at the jail to the MAIT
16 investigators that we still need to cover.

17 THE COURT: With respect to those statements
18 we just discussed, the troopers that have testified under
19 oath testified in keeping of how they would have testified
20 for Jackson v. Denno.

21 MS. DRAWDY: Yes, Your Honor.

22 THE COURT: Having heard that, Mr. Chambers,
23 are there any questions that you would like to ask on
24 cross-examination?

25 MR. CHAMBERS: I don't have any questions,

Terry McCall - Cross

1 Your Honor.

2 THE COURT: I'll accept that. I heard the
3 testimony that was under oath and I do feel that based
4 upon the evidence that was presented that they were
5 voluntarily and shall be admissible. It will be subject
6 ultimately to the jury's review in that regard.

7 So when we get back we scaled back the
8 Jackson v. Denno to some degree. Do you have any
9 witnesses do you attend to put up or the Jackson v. Denno?

10 MR. OVERBY: Only two and they should be
11 brief.

12 THE COURT: We'll come back and we'll take up
13 that issue, that is the Jackson v. Denno. I'll make a
14 ruling with regard to the McNeeley matter and the motions
15 that are outstanding. I will tell a jury pool to be up
16 here at 2:30.

17 MR. OVERBY: There is one motion that the
18 defense made about the three-hour time limit and at the
19 appropriate time I'd like to address that as well.

20 THE COURT: Let's do that when we get back.
21 I'll have some questions about that too. 2:30 -- I'm
22 sorry, I'll tell the jury to be here by 3:00. I was
23 trying to offset everything by a half hour.

24 (Lunch break.)

25 THE CLERK: All rise.

Terry McCall - Cross

1 THE COURT: Thank you. Mr. Overby, you
2 wanted to address the three-hour issue and I'll let you
3 start there.

4 MR. OVERBY: Thank you, Your Honor. I want
5 to present to the Court the section which mandates the
6 particular time of testing and that's 56 529.50 which is
7 commonly referred to as just the implied consent statute
8 which is essentially all part and parcel of this protocol
9 that we've been talking about today.

10 Under 2050 the statute states that if a
11 breathalyzer test is administered, the test must be
12 administered within two hours of the time of arrest in
13 order for it to be admissible. Any other tests
14 administered most notably blood or urine, you have three
15 hours to obtain those tests within the time of the arrest.
16 The key language of that particular section, Judge, of the
17 the arrest.

18 The testimony is supporting the fact that
19 this collision occurred around 18:00 hours or 6:00 p.m.,
20 at night. It wasn't concluded between 19:00 hours or
21 20:00 hours. Most notably, Judge, Officer MacAlhaney
22 didn't arrive at the hospital to speak with the defendant
23 until somewhere in that neighborhood. At that point, as
24 Trooper Hiatt told you, he was not under arrest. He was
25 being transported by EMS to the hospital to deal with his

Terry McCall - Cross

1 particular injuries.

2 The probable cause for the arrest hadn't been
3 established is not established until Trooper MacAlhaney
4 actually arrives at the hospital, talks to him, makes his
5 own visual inspection of the defendant, hears that the
6 defendant is under the influence of prescription drugs,
7 and essentially makes the determination at that point
8 that, yeah, I may have a felony DUI here and then he's
9 placed under arrest.

10 THE COURT: When was the blood test taken?

11 MR. OVERBY: It was taken at 20:45.

12 THE COURT: And he arrived at 20:13.

13 MR. OVERBY: When he issued the ticket 20:13.

14 THE COURT: Okay. Mr. Chambers.

15 MR. CHAMBERS: I don't have anything with
16 that.

17 THE COURT: Anything you'd like to put into
18 the record regarding the admissibility of the blood tests?

19 MR. CHAMBERS: I feel I've made a thorough
20 argument, Your Honor.

21 MR. OVERBY: Your Honor, at this time, the
22 State would rely on the brief and the testimony.

23 THE COURT: I'm going to respectfully deny
24 the defendant's motion. The first prong of the argument
25 was that there was no probable cause to have initiated the

Terry McCall - Cross

1 blood test. I do find that given the totality of the
2 circumstances testified to by the officers that there was
3 probable cause. There was testimony of dilated eyes and a
4 wild look. There was also testimony concerning the wreck,
5 the nature of the wreck, how it happened, explanation for
6 the same, cans in and around the vehicle which obviously
7 turned out to not have been alcohol he consumed but at the
8 time it did add to the probable cause. And then also a
9 direct statement from the defendant that he had taken
10 prescription drugs at some time prior to the accident.

11 I think that any of those individual facts
12 standing alone would not be sufficient to support a
13 finding of probable cause, but in their totality I think
14 that they establish probable cause without much question.

15 The second prong was a failure to comply with
16 the implied consent statute. The clear testimony from the
17 officers that he read the implied consent in it's totality
18 and there's evidence, although the same is contested, that
19 is executed and that it is signed by the defendant.

20 With respect to the unconstitutionality of
21 the statute per McNeeley, over the lunch period I sat down
22 and read both McNeeley and Schmurber and I believe the
23 responsive case in this instance is Schmurber. If when
24 you look at McNeeley, I don't think it changes the state
25 of the law with regard to drug samples and illegal search

Terry McCall - Cross

1 and seizure issues related to the blood sample in DUI
2 cases. I think it simply clarifies Schmurber versus
3 California.

4 In Schmurber, there's a portion in the case
5 which suggest if taken to it's logical conclusion that
6 because of the dissipation of the half life of alcohol in
7 the system that there's an argument that could be made
8 that you could take a drug sample under any set of
9 circumstances. I think that McNeeley if you read it in
10 its entirety essentially it's clarifying that to say that
11 that does not stand for the proposition that you can pull
12 a blood test under any set of circumstances in a DUI case.
13 What it says is you look at the totality of the
14 circumstances and you may be able to and you may not be
15 able to.

16 However, such as in the case of McNeeley, an
17 officer can't simply redirect to the hospital because he's
18 gotten a clear indication from the defendant that he won't
19 take a breathalyzer test, which is what had happened,
20 which is clearly unconstitutional.

21 However, when you look at Schmurber, the
22 facts are very similar and the distinguishing fact in
23 Schmurber was there actually was an objection to taking
24 the blood and notwithstanding the objection to taking the
25 blood, it still allowed that evidence to be admissible.

Terry McCall - Cross

1 I also say one additional thing with respect
2 to the illegal search and seizure and the nonconsensual
3 taking of a blood sample. One thing that distinguishing
4 this case in the State of South Carolina from the cases
5 that were before the Supreme Court is that there is an
6 implied consent statute. It's a specific statutory
7 mechanism for felony DUI which means you do apply the
8 implied consent to the taking of a blood sample in the
9 event of the felony DUI.

10 Now, the Supreme Court may look at that and
11 say that is in keeping with McNeeley and with Schmurber
12 unconstitutional but that will be a decision for them to
13 make. I presume it's constitutional at inception and find
14 that there was an implied consent under the statute in the
15 State of South Carolina.

16 I will say, as well, based on the evidence I
17 think it was a very difficult proposition to say that
18 Mr. McCall consented to this, that is an expressed
19 consent. I don't think he expressly consented to it.
20 Once that implied consent is read and the officer is
21 essentially saying to him under the law I can take your
22 blood or a sample regardless of whether you want me to or
23 not and he has been placed under arrest, then it's
24 difficult to make the argument that he consented thereto
25 after the fact.

David Andis - Direct

1 Based on all of that analysis, I find that it
2 is admissible under the law in the United States and
3 specifically in the State of South Carolina.

4 Okay. You got some Jackson v. Denno?

5 MR. OVERBY: Yes, Your Honor.

6 At this time, Your Honor, the State calls
7 Lance Corporal Andis to the stand.

8 THE CLERK: Sir, please come forward to be
9 sworn in. Place your left hand on the Bible and raise
10 your right.

11 LANCE CORPORAL DAVID ANDIS, having been duly
12 sworn, testified as follows:

13 Thank you. Please state your name for the
14 record.

15 THE WITNESS: David Andis.

16 DIRECT EXAMINATION

17 BY MR. OVERBY:

18 Q How are you this afternoon?

19 A Fine.

20 Q Where are you employed, sir?

21 A South Carolina Highway Patrol.

22 Q In what capacity?

23 A I'm assigned to the multi disciplinary accident
24 investigation team.

25 Q And what are some of your duties and

David Andis - Direct

1 responsibilities as part of being a member of that team?

2 A We do reconstruction of collision scenes to
3 include forensic mapping, interviews, DNA, fragmentation
4 analysis, speed calculations.

5 Q And one of your duties is to conduct interviews,
6 you said?

7 A Yes, sir.

8 Q Are you a licensed law enforcement agent in South
9 Carolina?

10 A Yes.

11 Q Are you involved in charging decisions?

12 A Related to MAIT investigations, no.

13 Q But you do have the capability to arrest in
14 certain circumstances?

15 A Yes, I'm a sworn officer.

16 Q Did you have the opportunity to interview the
17 defendant in this case, Mr. McCall?

18 A I did.

19 Q Describe the circumstances of that?

20 A I believe it was morning after the collision
21 heard a cell phone. Lance Corporal Memons responded to
22 the Greenville County Detention Center where the defendant
23 was in their custody. We attempted to conduct an
24 interview with him and get his side of what happened.

25 Q And where did this interview take place inside

David Andis - Direct

1 the detention center?

2 A To go visit a inmate we went in that entrance and
3 he was brought out and placed out there.

4 Q Was he facing you? Could you see him?

5 A Yeah, I could touch him.

6 Q Did he appear to be of sound mind at that time?

7 A He was. This was several hours after the
8 collision had occurred.

9 Q Did you ask him to provide you with a statement
10 in this particular case?

11 A I asked him if he wanted to provide a statement
12 after he was informed of his Miranda.

13 Q You read him his Miranda rights?

14 A Correct.

15 Q Did he appear to understand those Miranda rights?

16 A He acknowledged in the recording interview that
17 he did.

18 Q In so doing, did he, in fact, provide you with a
19 statement?

20 A He provided us with a statement.

21 Q How was that statement provided?

22 A It was an oral statement and he recorded it.

23 Q You said you audio recorded it?

24 A Correct.

25 Q And you said that you and Lance Corporal Memons

David Andis - Direct

1 were there?

2 A Correct.

3 Q I'm going to have you what I'd like to have
4 marked as Court's Exhibit No. 16.

5 (Audio statement marked as Court's Exhibit
6 No. 16 for identification and admitted into evidence.)

7 BY MR. OVERBY:

8 Q Corporal Andis what is that?

9 A This is a copy of the audio statement that was
10 obtained from Terry McCall.

11 Q How do you know that?

12 A I reviewed it and it's the same one that I took
13 with my digital recorder.

14 Q And you've listened to this recording?

15 A Yes, sir.

16 Q Has it been modified changed in any way from the
17 original?

18 A Not at all.

19 MR. OVERBY: Your Honor, this recording has
20 the entire conversation where Mr. McCall is being advised
21 of his Miranda rights. At this time I can play this for
22 you so you can hear the entire conversation or just a
23 portion or however you want me to proceed.

24 THE COURT: I'll accept your representation.

25 MR. CHAMBERS: Your Honor, he's already

David Andis - Direct

1 testified that he gave him Mirandized. I'll be fine if he
2 proceeds to the part where he tells us what the statement
3 is.

4 THE COURT: Okay.

5 MR. OVERBY: Some of that is this is the best
6 evidence and the best recorded recollection of this
7 particular aspect.

8 THE COURT: How long?

9 MR. OVERBY: Eighteen minutes.

10 THE COURT: What's the substance?

11 MR. OVERBY: The substances is that
12 Mr. McCall informed him that one, his brakes were not
13 working during the time, two, he informed him that he
14 essentially had a business disagreement with an individual
15 who gave him this vehicle and there's some indication that
16 there was some confusion between the parties as to who was
17 supposed to fix the brakes, and, three, there is an
18 admission that he actually took the prescription drug
19 Ativan prior to being involved in the collision, four, the
20 statement on there is he does not remember anything until
21 he was in the hospital essentially.

22 THE COURT: The standard for admissibility at
23 trial to determine whether its freely and voluntarily
24 given and whether Miranda has been complied with so I
25 don't necessarily need to hear that to make that

David Andis - Direct

1 determination unless there's something in the transcript
2 that argues against i.

3 MR. OVERBY: I would contend that there is
4 not.

5 THE COURT: I don't know if the defense takes
6 up opposition to it?

7 MR. CHAMBERS: No, Your Honor.

8 THE COURT: What I'm going to do based on the
9 officer's testimony is I'm going to find that the
10 statement elicited was voluntary and that it was in
11 compliance with Miranda given that Miranda warnings were
12 specific provided. There's been no exception taken to
13 that. I don't think I need to hear the statement to make
14 a determination.

15 So if you could make it a Court's Exhibit if
16 you want to at this time.

17 MR. OVERBY: It has been.

18 THE COURT: Okay. I find, subject to any
19 other objections to be levied during the introduction of
20 the testimony, I find that it's admissible.

21 MR. OVERBY: Thank you, Your Honor. And that
22 concludes the State's motions.

23 THE COURT: Okay. Mr. Chambers any
24 questions.

25 MR. CHAMBERS: No questions. One minor thing

David Andis - Direct

1 that kind of came to me over lunch, I want to make a
2 motion in limine. The solicitor at the motion hearing had
3 the booking photo of my client. I like to make a motion
4 to exclude that from evidence. That is a booking photo
5 that in and of itself can be prejudicial in the orange
6 jump suit, been arrested, it's not contemporaneous to him
7 at the scene of the accident. For those reasons we'd move
8 to have them not be able to introduce that.

9 THE COURT: Do you tend to introduce that?

10 MS. DRAWDY: Yes, Your Honor. The State's
11 contention is that it will not be introduced unless a
12 witness who saw him testifies that that is a fair and
13 accurate portrayal of when they encountered him. And I
14 would offer that his appearance may not have changed that
15 much from the time that he was booked. Certainly the jury
16 is going to hear that he was arrested. They're going to
17 hear from the officer who took him to the jail where he
18 was booked and that is not prejudicial. It's part and
19 parcel of the process when someone is involved in an
20 accident like this and was arrested or a crime.

21 So it doesn't suggest that he's been involved
22 in any other crime so it is not unfairly prejudicial.

23 THE COURT: So you're not intending to
24 introduce it unless the defense puts in the evidence
25 something that suggests it.

David Andis - Direct

1 MR. DRAWDY: If we have witnesses who saw him
2 at the accident, who saw him in the ambulance, at the ER
3 and they say that is how he appeared when they saw him,
4 it's close enough in time that that is quite reasonable
5 that this appearance had not changed that much or not at
6 all by the time he was booked.

7 MR. CHAMBERS: In other words, they intend to
8 introduce it.

9 MR. DRAWDY: Yes, we do. I'll lay the proper
10 foundation for it and it is not as to relevance or
11 unfairly prejudicial in any way, shape or form because
12 he's dressed in something that reflects that he had just
13 been arrested with a crime.

14 MR. CHAMBERS: My position is that it is, and
15 quite frankly if his appearance was important then they
16 could have easily documented that with a forensic picture.
17 They chose not do that and our position is a booking photo
18 is not evidence, it's not relevant in any way and we're
19 asking it not to be allowed into evidence.

20 THE COURT: Where is the photo? It seems to
21 me like you may be able to redact certain portions of it
22 so that it doesn't show an orange jump suit.

23 MR. OVERBY: I have a copy that doesn't
24 indicate the time and place. The reason that that photo
25 in particular has those is because we're showing that's a

David Andis - Direct

1 certified business record from Greenville County
2 Department of Public Safety.

3 THE COURT: So you have one that essentially
4 is redacted. It doesn't have all of the booking
5 information?

6 MR. OVERBY: Yes.

7 THE COURT: Before you introduce it, I want
8 you to print off a copy of that and let me take a look at
9 it. I don't know if the orange itself is suggestive of
10 anything, but I do know that the additional language, the
11 institutional nature of the picture is the issue. I'm not
12 sure that the orange is an issue because to me just
13 looking at it objective, it looks like an orange shirt.

14 I assume you have a continuing objection to
15 that?

16 MR. CHAMBERS: I do.

17 THE COURT: At this point I will tell you
18 like I don't like to make evidentiary rulings excluding
19 evidence without seeing context in which it was offered so
20 I will tell you generally that my inclination is to allow
21 that, if in fact it's close in time and it's relevant to
22 the testimony that's being offered at the time and you can
23 make your objection at that point. And that obviously
24 presumes that it is the redacted, just the picture without
25 the booking information on the original picture that you

Jury Selection

1 showed. Okay.

2 Anything else?

3 MS. DRAWDY: Your Honor, a copy of our
4 witnesses have misdemeanor charges that we will disclose
5 to the defense when they step down but one of them is a
6 fraud check conviction from the early 90's and the other
7 is a DUI charge from the early 90's and I will have those.
8 It is our contention that those are not convictions used
9 to impeach because of their age and because they are less
10 than a year.

11 MR. CHAMBERS: I agree with that, Your Honor.

12 THE COURT: I'm going to go ahead and make a
13 call for the jurors to come up. If in the meantime y'all
14 want to take a break, you're welcomed to take a break. Do
15 I have the indictment? I intend to read at least in
16 substance if not verbatim the allegations on the
17 indictment to give the jurors an idea of what this case is
18 about. You're welcomed to take a look at it and tell me
19 if you have any issues with it.

20 (Whereupon, there was a brief break.)

21 (Jury enters the courtroom.)

22 Good afternoon, ladies and gentlemen, welcome
23 to courtroom 6. We are going to pick the jury for the
24 specific case which has been called to bar.

25 Now, before I get started and before we pick

Jury Selection

1 a jury on this specific case, we need to advise you on
2 something that's very important, and that is this, that in
3 the State of South Carolina and the United States of
4 America and in Greenville County a defendant is presumed
5 innocent until proven guilty beyond a reasonable doubt by
6 the State.

7 The State has the burden of proving each and
8 every element of a criminal offense beyond a reasonable
9 doubt. Now, in this instance and in every instance a
10 criminal defendant wears a cloak of innocence that is
11 retains innocence until at the end of the case a jury
12 determines whether the State has met its burden of proof.

13 Now, in this case, ladies and gentlemen, we
14 will proceed on the case of the State versus Terry Edward
15 McCall. He has been charged with felony DUI resulting in
16 great bodily injury. Again, it is the burden of the State
17 to prove each and every element of the offense beyond a
18 reasonable doubt. You will sit as finders of facts as
19 jurors and make a determination at the conclusion of all
20 of the evidence that's been presented and at the
21 conclusion of the charge on the law that I give you
22 whether the State has met its burden of proof.

23 Until that time and not before that time, the
24 defendant is presumed innocent.

25 Now, ladies and gentlemen, one of the reasons

Jury Selection

1 I'm careful to advise you of that is because I'm going to
2 read to you the allegations that appear on the indictment
3 in this matter. It's important for me to tell you that
4 presumption of innocence and the burden of proof so you
5 won't think that simply because I'm inciting to you these
6 allegations that I'm representing to you that these are
7 the facts in this case because I am not. What I am
8 telling you is that these are the allegations.

9 It's important for me to tell you on the
10 front end so then you can intelligently answer the
11 questions that I pose to you.

12 In this case, ladies and gentlemen, the State
13 allege that Terry Edward McCall did in Greenville County
14 on or about March 4, 2012 drive a motor vehicle under the
15 influence of drugs and did an act forbidden by law or
16 neglected a duty imposed by law, specifically, the State
17 alleged that the defendant drove a vehicle under safely on
18 the highway and crossed the center median resulting in a
19 wreck which caused great bodily injury to Robert Lagrand
20 Suddeth.

21 Now, ladies and gentlemen, those are the
22 allegations in this case. I'm going to ask you several
23 questions. I remind you that you remain under your oath
24 to tell the truth that you took downstairs to your
25 qualifications.

Jury Selection

1 So I ask you, is there anyone among you who
2 has any prior knowledge, any opinions, or any prior
3 disposition regarding the allegations and parties in this
4 case?

5 (No response.)

6 Ladies and gentlemen, as you heard the
7 defendant in this case is Mr. -- I'm sorry. Would you
8 stand up and state your name and jury number.

9 JUROR NO. 238: I'm juror no. 238.

10 THE COURT: Yes, ma'am.

11 JUROR NO. 238: Does this person go by the
12 name of Rock Suddeth?

13 THE COURT: That is the alleged victim, the
14 person who was hurt?

15 MS. DRAWDY: Your Honor, I want to say yes,
16 he does.

17 THE COURT: And that would be a question I
18 would ask going forward. But you know him?

19 JUROR NO. 238: Yes, I do.

20 THE COURT: How do you know him?

21 JUROR NO. 238: I am friends with his wife.

22 THE COURT: Do you think that relationship
23 would make you unable to be a fair and impartial juror in
24 the trial of this case?

25 JUROR NO. 238: I would think so just because

Jury Selection

1 I have knowledge.

2 THE COURT: Okay. Good enough.

3 Yes, ma'am.

4 JUROR NO. 199: Is the Suddeth person have
5 another name?

6 MS. DRAWDY: No, Your Honor.

7 JUROR NO. 199: Then I don't know this
8 person.

9 THE COURT: Alright, ladies and gentlemen,
10 the defendant in this case is Mr. Terry Edward McCall. Is
11 there anyone among you that has a personal, professional
12 or family relationship with this Mr. McCall.

13 (No response.)

14 Mr. Randy Chambers of the Greenville County
15 bar who is represented Mr. McCall in this proceeding. Is
16 there anyone among you who has a personal, professional or
17 family relationship with Mr. Chambers?

18 (No response.)

19 The State is represented in this matter by
20 Assistant Solicitor Sara Lee Drawdy and Mr. Stan Overby.
21 Is there anyone among you who has a personal, professional
22 or family relationship with Ms. Drawdy, Mr. Overby or
23 anyone employed by the 13th Circuit Solicitor's Office?

24 (No response.)

25 Ladies and gentlemen, I'm going to read for

Jury Selection

1 you a list of potential witnesses in this case. Now, this
2 is going to be a long list. You may hear from all of
3 these witnesses and you may not. I don't know, but these
4 are potential witnesses that could be called ---

5 Yes, sir.

6 JUROR NO 103: You made a statement with
7 regard to knowing someone who works in the 13th Circuit.
8 My wife works with John Mauldin's wife. I don't know if
9 that qualify.

10 THE COURT: What is your name and jury
11 number?

12 JUROR NO 103: Juror No. 103, Carl Hollaway.

13 THE COURT: Do you think given that fact you
14 could still be a fair and impartial juror in the trial of
15 this case?

16 JUROR NO. 103: I think so.

17 THE COURT: Thank you, sir, I appreciate it.

18 I'm going to read off a list of witnesses for
19 you. I'm going to ask you the same question when I finish
20 reading this list as to whether you have a personal,
21 professional or family relationship with any of these
22 potential witnesses any whether give that relationship
23 whether you could be a fair and impartial juror in the
24 trial of this case.

25 Those are as follows: Mark Allison, Dana

Jury Selection

1 Suddeth, Julia Suddeth, Trooper Greg Certain, Trooper
2 Ledbetter, Captain Jenny Maran, Captain Sally Clark, Allen
3 Hall, Ryan Freeman, Chris Stache, Leutenant John James,
4 Joshua Robertson, Ashley Norman, David MacAlhaney, H.D.
5 Lane, Wes Hiatt, Don L. Bannister, Trooper LD Perry,
6 Sergeant Lindell Reynonds, Trooper Dunkel, Amy Stevens,
7 Brandon A. Williams, Marybeth C. McCormick, Carmen J.
8 Tucker, Shanna B. Sorrells, Captain Wendy C. Bell,
9 Corporal David C. Andis, Corporal W. Neil Nemens, Corporal
10 Mike E. Dunkin, Corporal Tommy J. Brooks, Trooper CJ
11 LaDue, JA. Johnson, Davis DeWeise, Ginger Smith, John
12 Reddick, Sharon Berry, Breana Dalmollin, Daniel Ayola,
13 Lauren Neil, Alex LeJock, Tracy Lance, Terry Johnson,
14 Juliet Martin, Robert Suddeth, Misty Cowart, Lt. Shawn
15 Stankos.

16 Ladies and gentlemen, anyone who has a
17 personal, professional, family relationship with any of
18 the proposed witnesses?

19 (No response.)

20 MR. CHAMBERS: There should be some
21 additional witnesses I believe I handed up.

22 THE COURT: Additional witnesses are Mahammad
23 Alacare, Troy Mitchell, James Land, Ann McCall, Bill
24 McCall, Connie McCall, Terry McCall.

25 (No response).

Jury Selection

1 Alright, so I have no affirmative response to
2 any of those witnesses.

3 Ladies and gentlemen, is there anyone among
4 you who has a close family relationship, immediate family
5 relationship to someone employed by law enforcement?

6 Stand up and in turn tell me your jury
7 numbers and what that relationship is, please.

8 JUROR NO. 3: Juror No. 3, Gavin Axson, one
9 of my cousins work for the Greenville City Police
10 Department.

11 THE COURT: Given that fact, do you think you
12 would still be fair and impartial in this case?

13 JUROR NO. 3: Yes, sir.

14 JUROR NO. 80: Juror No. 80, Zachary Garner,
15 my uncle and grand father were deputy police officers.

16 THE COURT: Do you think you could still be
17 fair and impartial in this case?

18 JUROR NO. 80: Yes.

19 THE COURT: Ladies and gentlemen, is there
20 anyone among you who is a member of or contributor to an
21 organization which advocates for either victim rights or
22 criminal prosecution. And when I saw that, for example, I
23 mean MAD, SAD, organizations which advocates for victims
24 rights or criminal prosecution.

25 Let the record reflect no affirmative

Jury Selection

1 reponse.

2 Ladies and gentlemen, is there anyone among
3 you who feels they could not be and impartial juror in the
4 trial of this specific case?

5 (No response.)

6 Counsel, any additional questions on voir
7 dire?

8 MS. DRAWDY: Nothing from the State, Your
9 Honor.

10 MR. CHAMBERS: Nothing from the defense, Your
11 Honor.

12 THE COURT: At this point we're going to move
13 forward with selection of the jury and what we will do is
14 we will perform what we call preemptory strikes. What
15 will happen is a list of your names were produced by just
16 randomly by the Clerk of Court and she will call out your
17 name. When she calls out your name, if you will, please
18 stand up just where you are.

19 The attorneys will then make strikes or
20 challenges. They each get five strikes. When you stand
21 up they will either say one of two things. If you both o
22 the attorneys say, please seat the juror or please swear
23 the juror, then you would have been selected for this case
24 and you can have a seat in the jury box. Bring your bag
25 or bring whatever it is that you may have and come up here

Jury Selection

1 and sit in the jury box.

2 If you hear from either side, please excuse
3 the jury from the trial of this case or please strike the
4 jury, then you would have been stricken from this case and
5 then you can have a seat. Please don't be offended if you
6 are stricken or if you are asked to sit on the jury.

7 The attorneys have very wide latitude and
8 very wide discretion in determining who sits on the jury
9 and who does not, and you will never know why it is and
10 I'll never know why it is or the instances why you may hve
11 been selected to be on the jury or why you may have been
12 stricken from the jury.

13 Having said that, ladies and gentlemen, each
14 side will get five strikes. We'll get 12 jurors and then
15 we'll pick two alternates. The strikes will be five and
16 five and then one and two for the alternates.

17 THE CLERK: Juror No. 103, Carl Hollaway.

18 MS. DRAWDY: Please excuse this juror.

19 THE CLERK: Thank you. Juror No. 72, Jess
20 Fortune.

21 MS. DRAWDY: Please present Mr. Fortune.

22 THE CLERK: What says the defendant?

23 MR. CHAMBERS: Excuse Mr. Fortune from this
24 case, please.

25 THE CLERK: Thank you, please be seated.

Jury Selection

1 You're excused from the trial of this case.

2 Juror No. 158, Kara Park.

3 MS. DRAWDY: Please present Mr. Fortune.

4 THE CLERK: What says the defendant?

5 MR. CHAMBERS: Swear Ms. Park.

6 THE CLERK: Thank you. Please come up and

7 have a seat in the jury box, please.

8 Juror No. 211, Julie Triplett. What says the

9 State?

10 MS. DRAWDY: Please present Ms. Triplett.

11 THE CLERK: What says the defendant?

12 MR. CHAMBERS: Please swear Ms. Triplett.

13 Thank you. Please come up and have a seat in

14 the jury box.

15 Juror No. 108, Erin Hurst. What says the

16 State?

17 MS. DRAWDY: Please present Ms. Hurst.

18 THE CLERK: What says the defendant?

19 MR. CHAMBERS: Please swear Ms. Hurst.

20 Thank you. Please come up and have a seat in

21 the jury box.

22 Juror No. 240, John Pennell. What says the

23 State?

24 MS. DRAWDY: Please present Mr. Pennell.

25 THE CLERK: What says the defendant?

Jury Selection

1 MR. CHAMBERS: Please excuse Mr. Pennell from
2 the trial of this case.

3 THE CLERK: Thank you, you may be seated.
4 You have been excused from the trial of this case.

5 Juror No. 239, Britney Morehead. What says
6 the State?

7 MS. DRAWDY: Please present Ms. Morehead.

8 THE CLERK: What says the defendant?

9 MR. CHAMBERS: Please swear Ms. Morehead.
10 Thank you. Please come up and have a seat in
11 the jury box.

12
13 Juror No. 3, Gavin Axson. What says the
14 State?

15 MS. DRAWDY: Please present Mr. Axson.

16 THE CLERK: What says the defendant?

17 MR. CHAMBERS: Please excuse Mr. Axson.

18 THE CLERK: Thank you you may be seated. You
19 have been excused from the trial of this case.

20 Juror No. 45, Mary Jane Clayton. What says
21 the State?

22 MS. DRAWDY: Please present Ms. Clayton.

23 THE CLERK: What says the defendant?

24 MR. CHAMBERS: Please swear Ms. Clayton.

25 Thank you. You may be seated in the jury

Jury Selection

1 box.

2 Juror No. 217, Jeffrey Veatch. What says the
3 State?

4 MS. DRAWDY: Please present Mr. Veatch.

5 THE CLERK: What says the defendant?

6 MR. CHAMBERS: Please swear Mr. Veatch.

7 Thank you.

8 Juror No. 73, Brian Fowler. What says the
9 State?

10 MS. DRAWDY: Please present Mr. Fowler.

11 THE CLERK: What says the defendant?

12 MR. CHAMBERS: Please swear Mr. Fowler.

13 Thank you. Please be seated in the jury box.

14 Juror No. 238, Windi Floyd-Cook.

15 THE COURT: Do y'all have a motion to excuse
16 for cause?

17 MR. CHAMBERS: Yes, Your Honor.

18 THE COURT: I'll grant that.

19 THE CLERK: You may be seated. You're
20 excused from the trial of this case.

21 Juror No. 114, George Jones. What says the
22 State?

23 MS. DRAWDY: Please present Mr. Jones.

24 THE CLERK: What says the defendant?

25 MR. CHAMBERS: Please swear Mr. Jones.

Jury Selection

1 Thank you.

2 Juror No. 199, Wendy Smith. What says the
3 State?

4 MS. DRAWDY: Please present Ms. Smith.

5 THE CLERK: What says the defendant?

6 MR. CHAMBERS: Please swear Ms. Smith.

7 Thank you.

8 Juror No. 229, Scott Williams. What says the
9 State?

10 MS. DRAWDY: Please excuse Mr. Williams.

11 Thank you. You may be seated. You're
12 excused from the trial of this case.

13 Juror No. 146, Patricia Moody. What says the
14 State?

15 MS. DRAWDY: Please present Ms. Moody.

16 THE CLERK: What says the defendant?

17 MR. CHAMBERS: Please swear Ms. Moody.

18 Thank you. Please come up and have a seat in
19 the jury box.

20 Juror No. 169, Hazel Powell. What says the
21 State?

22 MS. DRAWDY: Please present Ms. Powell.

23 THE CLERK: What says the defendant?

24 MR. CHAMBERS: Please swear Ms. Powell.

25 Thank you. Please come up and have a seat in

Jury Selection

1 the jury box.

2 Juror No. 136, Amy Macphee. What says the
3 State?

4 MS. DRAWDY: Please present Ms. Macphee.

5 THE CLERK: What says the defendant?

6 MR. CHAMBERS: Please swear Ms. Macphee.

7 Thank you. Please come up and have a seat in
8 the jury box.

9 THE COURT: Okay. We'll pick two alternates,
10 strikes one and two.

11 Ladies and gentlemen, 12 primary jurors will
12 deliberate on this case, but it's very important that we
13 have alternates because it's very often it comes to pass
14 that one of the original 12 can not deliberate because
15 either they become sick or they have a family member who
16 may become sick or for whatever reason they become
17 disqualified or unavailable. It's very important that we
18 have alternates because we can't proceed with a number
19 less than 12 in a criminal trial.

20 You will be an alternate but it doesn't mean
21 that your contribution will be any less. As a matter of
22 fact, it's just as important as the initial 12 because you
23 may be among the 12 deliberating jurors.

24 Having said that you may call the names.

25 THE CLERK: Juror No. 35, Crystal Cain. What

Jury Selection

1 says the State?

2 MS. DRAWDY: Please present Ms. Cain.

3 THE CLERK: What says the defendant?

4 MR. CHAMBERS: Please swear Cain.

5 Thank you. Please come up and have a seat in
6 the jury box.

7 Juror No. 75, Clayton Frazier. What says the
8 State?

9 MS. DRAWDY: Please present Mr. Frazier.

10 THE CLERK: What says the defendant?

11 MR. CHAMBERS: Please swear Mr. Frazier.

12 Thank you. Please come up and have a seat in
13 the jury box.

14 THE COURT: Alright. Counsel any objections
15 or matters of law to take up with respect to the
16 qualifications or selection of this jury.

17 MS. DRAWDY: None from the State, Your Honor.

18 MR. CHAMBERS: None from the defense, Your
19 Honor.

20 THE COURT: Alright. Ladies and gentlemen,
21 those of you who are remaining I will dismiss you for the
22 day. I suspect that this trial at least will go into
23 tomorrow or some portion of tomorrow as well. I don't
24 know what's going on in the other courtroom or what pace
25 they are, but if you will call back tonight after 6:00 and

Jury Selection

1 the subsequent nights you will get instruction on where to
2 be.

3 Thank you for coming up here today and I hope
4 you have a good week and a fantastic weekend.

5 (Remainder of jurors exit the courtroom.)

6 Ladies and gentlemen, congratulations. I
7 know you're excited about that. I always find it helpful
8 on the front end for me to give you some kind of idea as
9 to what we'll do, what your role is as jurors in the case,
10 what my role is as the judge and then give you some idea
11 of the process or procedure that will follow during the
12 trial so that you'll have some idea of what comes next.

13 Let me start off by restated what I stated
14 initially and that is in this criminal trial just like in
15 any criminal trial in the United States of American, the
16 defendant, Mr. McCall is presumed innocent until such time
17 as the State meets its burden of proof of proving beyond a
18 reasonable doubt each and every element of the offense.

19 Now, you ultimately will determine, 12
20 deliberating jurors will determine whether the State has
21 met their burden of proof. You will determine that in
22 your role as the finders of facts. You are the finders of
23 facts. You'll determine what the facts are in this case
24 based on the evidence that's presented.

25 Now, evidence can take any number of forms.

Jury Selection

1 Generally speaking the evidence you will receive in a
2 trial of any sort is testimony, that is witnesses who will
3 take the stand, take the oath of a witness and testify.
4 But you also receive evidence in other forms as well. You
5 could receive video, audio evidence, pictures, actual
6 tangible objects presented into the record as evidence.

7 I don't know what that evidence will be
8 because at this point I don't know any more about the case
9 than you do necessarily, but you will take all of that
10 evidence and you'll determine based on the evidence that's
11 presented what the facts are in the case.

12 In your deliberations you'll take the facts
13 as you determine them to be and you will apply them to the
14 law as I give it to you. Now, just as you are the finders
15 of the facts, you are the judges of the facts, I'm the
16 judge of the law. I'm essentially the referee, the
17 umpire. I'm calling balls and strikes. I don't have a
18 stake in this proceeding and I have no interest in what
19 your final determination may be. My sole and only concern
20 is that each of the parties to this case gets a fair
21 trial.

22 And in doing that, I will make rulings with
23 respect to the admissibility of the evidence if there is
24 objections, and I'll also make ensure that we're following
25 the appropriate process. At the end of the trial I will

Jury Selection

1 also give you a charge on the law that is applicable to
2 the evidence that's presented in this case.

3 The reason I'll wait until the end the give
4 you the charge on the law is because I am in the same
5 position as you are because I haven't heard the evidence
6 so I don't know as I sit here what the law will be
7 applicable to the evidence that's presented in the case.
8 I will know that when all of the evidence has been
9 presented.

10 Now, at the end of the case you'll accept
11 under the oath that you take, and it's just human, you are
12 charged with accepting the law as I give it to you.
13 That's my responsibility, understand the facts is your
14 responsibility. No one can tell you what the facts are.
15 The parties can't tell you what the facts are and I can't
16 tell you what the facts are. If you hear me anything
17 during the conduct of this trial that gives you an
18 impression that I have an opinion of the facts or I think
19 you should find one bit of fact or that you should make
20 any particular determination, please excuse yourself of
21 that notion. I am disallowed by law of having an opinion
22 about the facts and telling you what the facts are. You
23 make that determination of the evidence.

24 The way this trial will proceed is after I
25 finish how we will proceed, the attorneys will have the

Jury Selection

1 opportunity to make brief opening statements to you. The
2 State will go first and give you an opening statement and
3 then the defense will have the opportunity for making an
4 opening statement.

5 Now, understand those statements are not
6 evidence. Evidence will be presented once they put the
7 first witness on the stand. That is simple arguments,
8 advocacy from the perspective sides. Ordinarily in a
9 opening statements, they don't talk a lot about the
10 evidence because they haven't presented it yet. Simply
11 what that is going to be is an introduction of themselves
12 and their case.

13 After they have given their opening
14 statements, then the State will have the opportunity to
15 begin presenting its evidence. Now, the State goes first
16 because the State has the burden of proof just as I have
17 told you. So the State will call a witness to the stand.
18 That witness will take the oath and to begin to testify.
19 That's evidence that's been received into the record.

20 By that testimony you may receive into
21 evidence of audio tapes, video tapes or any number of
22 objects, items, that you consider as evidence. After the
23 solicitor has asked questions and examination, then the
24 defense has the opportunity to cross-examine that very
25 same witness. After the defense has asked questions, then

Jury Selection

1 we'll proceed to the next witness. Same process.

2 After the State has presented all of the
3 evidence that it tends to present, then the defense has
4 the opportunity in his discretion to present evidence as
5 well. If the defense elects to submit evidence, then,
6 again, they'll call witnesses and be examined and cross-
7 examined. After all of the evidence has been presented,
8 then the lawyers will have the opportunity to argue to you
9 in closing.

10 Understand the distinction between opening
11 statement and closing argument, the attorneys will be
12 commenting you on the evidence that's been presented and
13 attempting to persuade you to their respective positions.
14 Again, closing arguments is not evidence, they'll
15 commenting on the evidence but they are not to be
16 considered as evidence.

17 After you've heard closing arguments then
18 I'll give you a final charge on the law, and then after
19 I've given you a final charge on the law, I'll send you
20 back to your jury room and you can begin your
21 deliberations. Please don't begin any deliberations or
22 discussions of this case until I tell you begin your
23 deliberations at the very end of the case after I've given
24 you a charge on the law.

25 I know that by your common sense you know why

Jury Selection

1 that is. At the risk of insulting your intelligence, I'm
2 going to tell you anyway. You know that it's not fair
3 that you make any determination until and unless you've
4 heard all of the facts, all of the evidence, that bares
5 upon the issue to be determined. You know that in your
6 lives at some point in time, your brothers, you sisters,
7 your kids, your parents, your friends, someone has come to
8 you and said you're not going to believe what happened and
9 they tell you a story entirely from their perspective and
10 their point of view, and you are persuaded to their
11 position and then you find out there is another side to
12 the story, and you find out that there's more to it than
13 you had thought.

14 Court is the exact same way. When you sit
15 through a trial, it's important that you hear everything
16 before you begin to deliberate and make up your mind.
17 Listen to all of the evidence before you begin your
18 deliberation.

19 During this case, we will take breaks. When
20 you take those breaks, no one is policing you except for
21 yourselves but I tell you don't be tempted to begin
22 discussion of the case. Also when we take a break at the
23 conclusion of testimony night, you'll go home, and if your
24 spouse is like my spouse, he or she is going to start
25 asking you what's going on, what did they say, who

Jury Selection

1 testified, what it's about. I would charge you to resist
2 the temptation to discuss it with your spouse or
3 significant other.

4 Because this is what happens, they ask you
5 questions and you begin to respond to those questions, but
6 when you begin to respond to those questions that always
7 invites more questions, they're never satisfied with just
8 a simple answer. What happens is you start essentially a
9 deliberation with someone who is not among the 12
10 deliberating jurors and you start having to respond to
11 questions and you're making qualitative determinations of
12 the evidence that you heard and then responding to
13 additional questions. That's a form of deliberations.
14 What you need to say is I'm not going to talk to you about
15 it right now.

16 I'll also tell you that when we're on breaks
17 or when you go home from the evening, don't get on your
18 computer, don't get on your smart phone and don't try to
19 do any self-help and find out anything about this case.
20 I'm not sure that you could, but if you were to find
21 something like that, then it would be outside of the scope
22 of the evidence that's presented at trial and it's not
23 appropriate for your consideration, which means you would
24 have tainted the jury's deliberation and you will have
25 tainted the case irrevocable. So don't do any self-help.

Jury Selection

1 You're going to get all the information you need by the
2 testimony that's presented in the case.

3 As I suggested to you earlier, we will be
4 taking breaks. You're not going to be held hostage in
5 that jury box for more than about an hour or hour and a
6 half at a time. I have to take breaks, I presume y'all
7 need to take breaks too. If at any point in time, y'all
8 decide any one of you individually decides, hey, I need a
9 break let me or let the bailiffs know because right now
10 you are the 14 most important people in this courtroom and
11 it's important that you are focused and listening to the
12 evidence.

13 If for ever reason you are distracted and
14 thinking I wish they would all shut up and let me take a
15 break, then let me know, and we'll all take a break and
16 come back refreshed.

17 Also, during the course of the trial, you
18 will hear the attorneys making objections and making
19 motions. When they make objections and they make motions,
20 it's my role is the referee and rule either against or in
21 favor of one of the parties.

22 Now, I don't want you to take that as any
23 indication that I have a preference before or either side.
24 I truly do not. When I make those determinations that
25 those are sterile and objective determinations based on my

Jury Selection

1 understanding of the law and the rules of evidence, so
2 don't take away from that that I have a preference one way
3 or the other, I truly do not.

4 Ladies and gentlemen, before we started with
5 the opening statements, I'm going to ask the Clerk of
6 Court to swear you in.

7 THE CLERK: Would you please respond and
8 raise your right hand. The response to oath is "I will."
9 You shall well and truly try case 2012-GS-23-10242, the
10 State versus Terry Edward McCall indicted for felony DUI
11 resulting in great bodily injury and a true verdict
12 rendered according to the law and the evidence so help you
13 God.

14 THE JURY: (Collectively) I will.

15 THE CLERK: Thank you. You may be seated.

16 THE COURT: Solicitor.

17 MS. DRAWDY: You thought you'd get to see
18 something, didn't you? I'd like to demonstrate a point
19 and it's like what Judge Stilwell told you. The State has
20 the burden of proof in this case. The defendant is
21 presumed to be at this point. There is a white canvas and
22 nothing exists in this case until the State brings forth
23 witnesses and evidence, the types of evidence the judge
24 spoke about, to help you to determine what that picture
25 actually looks like. And that's what you do. That's what

Jury Selection

1 the finders of facts are.

2 It's called the burden of proof. It's very
3 heavy to be lifting and I'm grateful to have co-counsel to
4 help me. You probably have the biggest burden of all
5 though because you have to sort through it all and decide
6 what the facts are. And there may be some contradictory
7 things that come into the record and you have to use your
8 common sense to determine what is true, what is not, what
9 makes sense in light of everything else that you hear so
10 you're going to have to tie it all together.

11 I'm going to tell you a little bit about what
12 the State must prove to you in order for you to reach a
13 verdict of guilty in this case. We'll argue again at the
14 conclusion of the case. What the State has to prove is
15 Mr. McCall was driving a motor vehicle in the State of
16 South Carolina and more specifically Greenville County and
17 more specifically while he was operating that vehicle, he
18 was impaired by having taken some type of drug or drugs.

19 And that's what the indictment accuses him of
20 doing. So the State must prove to you that he had taken
21 some type of drug that impaired him and that as a result
22 of taking that drug he did something while he was driving
23 that was incorrect or wrong or negligent and cause great
24 bodily harm to another human being. That's what we have
25 to prove to you.

Jury Selection

1 We all have a duty to do the best we can when
2 we get out on the road and when we go from point a to
3 point b, we have no choice as to who we travel on the road
4 with. We have an obligation to each other not to render
5 ourselves impaired and then get out on a common road way
6 when we're endangering others.

7 I'm going to ask you to listen carefully to
8 the evidence, be fair, use your common sense and render a
9 verdict that speaks the truth and that's what verdict
10 means.

11 I'll give you a quick overview of the
12 evidence and then Mr. Chambers to talk to you a little
13 bit. This is an adversarial system and we each have a
14 different role in this case, but just because it's an
15 adversarial system doesn't mean that it has to be
16 unpleasant or argumentative. We each do the best that we
17 can to give you what we have to offer for your
18 consideration.

19 You will hear testimony from the State and
20 they'll be any more witnesses than maybe the defense would
21 put up. It is our burden to give you everything that we
22 found in our investigation and there are certain rules in
23 court that may or may not allow certain pieces of
24 information that we want to show you to come into
25 evidence. But you'll hear from officers who investigated

Jury Selection

1 the scene, you'll hear testimony from one or more
2 eyewitnesses who saw the crash. You'll see photographs of
3 the vehicles.

4 You'll hear testimony of the EMS workers and
5 people who went to the aide of the victim. The evidence
6 will ultimately show that this incident happened on March
7 4, 2012, a Sunday evening around 6:00, Robert Suddeth and
8 his daughter [REDACTED] were on their way from Furman where she
9 had volleyball practice to go to church. When the
10 defendant crossed the center line and crashed into them.

11 It took almost 45 minutes for them to get
12 Mr. Suddeth out of that mangled truck

13 The evidence at the scene will also show that
14 the defendant, Mr. Suddeth was under the influence and the
15 investigative officer ultimately went to the hospital and
16 talked to him and decided to make the charge of felony DUI
17 because Mr. Suddeth had life threatening injuries and that
18 is the definition of great bodily injury. It's a
19 technical legal issue great bodily injury as well as the
20 use of your arms and your legs.

21 There will be evidence to put up to show that
22 that's what happened to Mr. Suddeth. He is real lucky to
23 be here today. Thank you.

24 MR. CHAMBERS: If it please the Court, Your
25 Honor. Solicitor.

Jury Selection

1 Ladies and gentlemen, as you heard, my client
2 is sitting beside me, Terry McCall, is accused of
3 committing a crime of driving under the influence
4 resulting in great bodily injury. You heard from the
5 solicitor the case that she's going to present to you.

6 We're going back, as she told you, March 4,
7 2012. On that day, sometime between 5:30 and 6:00 in the
8 afternoon, still daylight outside, over there on Mount
9 Pleasantburg. I'm sure who live in this area are probably
10 family with that evidence because it's down there close to
11 Cherrydale. Worley Road runs out -- if you're driving
12 towards Cherrydale, there's a Spinx station right there on
13 your left, and another gas station on the other side and
14 it's just a few hundred yards from where Cherrydale.

15 So it's a busy road that time of day.
16 There's four lanes of traffic and I believe that or a
17 substantial part of that, there's a turn lane, not a
18 raised median but a median, and that's where Terry McCall
19 was going northbound and Mr. Suddeth was going southbound.

20 I will tell you from the outset that we will
21 concede that there was great bodily injury in this case.
22 There's absolutely no question about that. It's clear
23 from the photographs was driving and he wasn't doing
24 anything wrong. There was a curve and he was severely
25 injured and those were life threatening injuries.

Jury Selection

1 I know Mr. McCall feels bad about that and we
2 don't want you to spend any time on that issue in this
3 case. There's absolutely no question that that's the
4 case. So the things that you're going to need to focus on
5 are the things the solicitor told you about and one of
6 those things is impairment.

7 We believe as this case unfolds you're going
8 to see that there is a real question in this case as to
9 whether my client was impaired. In fact the evidence will
10 be clear to you when this is over that he was not
11 impaired. He was also injured. He wasn't injured to the
12 degree that Mr. Suddeth was injured, but he was in his
13 1994 Ford Explorer, a car that he had just got back two
14 days before from the car dealer and he had already been
15 driving it for a couple of days since he got back.

16 As he was northbound, you will hear evidence
17 that he began to feel this familiar feeling that he was
18 about to have this seizure. The medical history of
19 seizures and he was about to have a seizure. He went to
20 put on his breaks and low and behold his breaks did not
21 work and as a result he swerved over into the other lane
22 and, frankly, there's a lot he doesn't remember and you're
23 going to hear that. So we have a question as to
24 impairment.

25 What you're also going to have a question as

Jury Selection

1 to that other one element that she told you about and that
2 is for you to find somebody guilty, you have to find
3 beyond a reasonable doubt that they either did an act
4 that's forbidden by law or they neglected to observe a
5 duty that is required by law. So keep those things in
6 mind.

7 You will hear as their witnesses testified
8 that Mr. McCall cooperated with the police. You'll hear
9 when they got out there Office Hiatt was the first one to
10 the scene and Mr. McCall was still trapped in his car. He
11 had to be extricated out of his car using hydraulic
12 equipment by the fire department and then he was in the
13 ambulance. He was being evaluated and treated by EMS and
14 Sergeant Hiatt made contact with him and went over there
15 to talk to him. Mr. McCall did what he could what he
16 remembered and told him that his brakes failed.

17 Then he's taken to the hospital and couple
18 hours after that, you'll hear that Trooper McAlhaney went
19 there upon his lying on his stretcher in the critical care
20 unit and he begins to ask him questions as he's lying
21 down. He told him, my brakes failed. They then submit
22 him to a blood draw so they could test his blood and they
23 also did a urine analysis and you'll get to hear what the
24 results of that was.

25 He told police that he talks prescription

Jury Selection

1 medication and he takes prescription medication. You will
2 find that there was prescription medication in his system.
3 The presence of prescription medication may be lead a
4 person the believe that he's under the influence so you
5 have to consider that as you go through this.

6 Those are basically the facts. There are a
7 lot of things that are already agreed upon. I think you
8 can already tell that, but there are some key things that
9 are not agreed upon in this case.

10 As the solicitor told you, you are the
11 finders of fact. You have a very important job here and
12 Judge Stilwell told you this morning and as he indicated
13 in his earlier remarks it is an extraordinary important.
14 It is a job that goes all the way back to four founding
15 fathers when they stressed the importance of a jury. It
16 is so important that for example John Adams said that
17 trial by jury is the very heart and lungs of democracy and
18 that's true because the State can bring charges against
19 people but they have to be able to prove those charges.

20 Before I go any further I want to say to you
21 that it is irrelevant if they believe that they are
22 correct in their conclusion that Mr. McCall is guilty.
23 They probably believe that. I suspect that they do.
24 People believe things sometimes that are wrong, and the
25 thing that you bare in mind as you sit here in judgment as

Jury Selection

1 the tryer of fact, is that their burden is beyond a
2 reasonable doubt.

3 There are other trials. This is a busy week
4 in this courthouse. We have common pleas going on which
5 is what most people refer to as civil court and I can tell
6 you because I have also practiced in common pleas that
7 there are some very serious issues that are decided there.
8 Cases like this one where someone was severely injured and
9 will be impaired for the rest of their lives and millions
10 of dollars sometimes are on the line, and in a situation
11 like that we have said that the burden of proof is by a
12 preponderance of the evidence simply by the greater weight
13 of the evidence.

14 Which means if you start out at the beginning
15 of a trial and let's say we have this metaphorical scale.
16 The plaintiff, the person who is bringing that case, would
17 only have to tip that scale a little bit in their favor,
18 the greater weight of the evidence. If they do, in the
19 jury's eye, they prevail.

20 There are other tribunals where the tryer of
21 fact has to make their decision by clear and convincing
22 evidence. That sounds like a high burden and it is, but
23 ladies and gentlemen, the greatest burden is reserved for
24 general sessions or criminal court. And the reason for
25 that ladies and gentlemen, it is only court where somebody

Jury Selection

1 can be denied their liberty. And liberty is the most
2 precious thing that we have and it is a serious thing to
3 take that away.

4 So as you listen to these witnesses testify
5 and you consider the case that's in front of you, you're
6 not just here to simply decide who I believe the most.
7 It's not a contest. You have to decide am I convinced
8 beyond a reasonable doubt. Am I firmly convinced by this
9 evidence? Am I definitely sure.

10 I'm sure the solicitor will remind you at
11 some point during this, they don't have to remove all
12 doubt. That would be almost impossible to do. Some of us
13 might believe under the right circumstances the sun is not
14 going to come up tomorrow. That's not a reasonable doubt.
15 It's certainly a possibility but not likely. But you do
16 have to believe with enough certainty in your mind if
17 there were something important that you had to bet on the
18 outcome that you feel comfortable with that you're not
19 going to go home and it's going to nag at you a couple
20 days later.

21 Y'all are going to get to talk about it.
22 Here's the way that this system works and why it's such a
23 good system. We all come here from different walks of
24 life, different backgrounds, different points of view,
25 common sense that you have acquired just by living day to

Jury Selection

1 day. You're going to size up witnesses the way you size
2 up people every day. Do I believe this person based on
3 their demeanor, based on whether it's corroborated by the
4 evidence and in each instance you say to yourself do I
5 believe this and does this establish what they're trying
6 to establish beyond a reasonable doubt or is there doubt
7 in my mind.

8 You're going to use your common sense just as
9 the solicitor told you and then eventually after the case
10 is presented to you, you will have been charged on the law
11 by then. You will have the law that you need to apply to
12 the facts in this case and you will begin to deliberate
13 and see if you can come up with a unanimous decision.

14 Any group that you put together in this case
15 a group put together by chance, some of you will be more
16 opinionated than others, but the beauty of it is that all
17 of you your vote matters just as much as the other and
18 that's how things work, and that's how we will get justice
19 in this case.

20 Ladies and gentlemen, I suspect this will be
21 a somewhat lengthy trial. You heard the witness list. I
22 don't know if all those witnesses will be called, but
23 certainly a lot of them will. I will tell you that
24 Mr. McCall has been waiting for this day since March 4,
25 2012. He is thankful that you are here. He is thankful

Jury Selection

1 that he can get his day in court. He is pleaded not
2 guilty to his case and I will have an opportunity to come
3 back and talk to you but it is our position that the
4 solicitor will not be able to prove her case and come to
5 the end of this trial, there will be a not guilty verdict.
6 I look forward to hearing the solicitor's case.

7 THE COURT: Okay, ladies and gentlemen, we're
8 going to start with the introduction of evidence in just a
9 few minutes. Let's take a very short break so you can see
10 where your jury room is and get oriented in that regard,
11 refresh for a second and then come back and the State will
12 begin it's presentation of evidence.

13 I will tell you that there are some days when
14 we'll go beyond 5:00, normal business hours. I won't do
15 that today because I haven't had the opportunity to warn
16 you of that before hand. If during the course of this
17 trial, we have some days where we need to go late, I'll
18 try to tell that as early in the day as I possibly can so
19 you can make arrangements if we're going to do that.

20 I think that we got enough time to try this
21 case. Based on what the attorneys have told me right now,
22 I think that we will probably be finishing up some time
23 Thursday morning. Don't hold me to that because I don't
24 make guarantees and I don't control evidence that's
25 presented. At this point, it's my best guess, so treat it

Mark Allison - Direct

1 as the best guess and as we go along in the trial, I'll
2 update you on how that estimate may change from time to
3 time.

4 So take a brief break and please don't
5 discuss the case.

6 (Jury exits the courtroom.)

7 (Whereupon there was a brief break.)

8 Alright, are we ready for the jury?

9 MS. DRAWDY: Yes, Your Honor.

10 THE COURT: Alright, bring them in.

11 Okay, you may call your first witness, ma'am.

12 MS. DRAWDY: The State calls Mark Allison.

13 THE CLERK: Mr. Allison, if you would come
14 forward to be sworn in.

15 MARK ALLISON, having been duly sworn,
16 testified as follows:

17 Thank you, you may be seated. Please state
18 your name for the record.

19 THE WITNESS: Mark Allison.

20 DIRECT EXAMINATION

21 BY MS. DRAWDY:

22 Q Good afternoon, Mr. Allison. Thank you for being
23 here.

24 A Thank you.

25 Q Mr. Allison, what part of Greenville County do

Mark Allison - Direct

1 you live in?

2 A I live in Pebble Creek.

3 Q How long have you lived here?

4 A Eighteen years.

5 Q And how old are you, do you mind saying?

6 A 73.

7 Q I wanted to ask you if you actually saw a bad
8 crash happen on March 4, 2012?

9 A Yes, ma'am, I did.

10 Q Where did that crash happen?

11 A Right above Worley Road. Somebody say east,
12 somebody said south.

13 Q Let's see if we can figure that out. I'm going
14 to show you State's Exhibit 1 and ask you if you can tell
15 me what this is?

16 A That's a picture of 291 and Worley Road.

17 Q Is it a fair and accurate aerial picture of that
18 area?

19 A Yes, ma'am.

20 MS. DRAWDY: We'd like to introduce this as
21 State's Exhibit 1.

22 THE COURT: Any objection?

23 MR. CHAMBERS: No objection.

24 (Map marked as State's Exhibit No. 1 for
25 identification was admitted into evidence.)

Mark Allison - Direct

1 BY MS. DRAWDY:

2 Q If you want me to point, can you see this from
3 where you're sitting?

4 A Sure.

5 Q And I will point if you'll tell me where to put
6 the pointer?

7 A Okay.

8 Q What direction were you coming from?

9 A Cherrydale.

10 Q And which direction is Cherrydale?

11 A Back down this way.

12 Q This way, is that right?

13 A Yes.

14 Q And you were coming from that direction?

15 A Yes, ma'am.

16 Q What did you see happen in front of you as you
17 came through the light at Worley Road?

18 A Well, we just got past the cement right there, I
19 saw a green car just turn left all at once and hit a pick
20 up truck and it bounced straight up it hit so hard.

21 Q And which direction and which lane was the pick
22 up truck in?

23 A The left lane, he was in his lane.

24 Q Where was the pick up truck traveling?

25 A He was two cars ahead of me.

Mark Allison - Direct

1 Q And he was traveling in front of you?

2 A Right.

3 Q So he was going in the direction away from Worley
4 Road?

5 A Towards Rutherford Road.

6 Q And where was the green ford coming?

7 A North.

8 Q This way?

9 A Yes, ma'am.

10 Q Where did the wreck happen?

11 A That's the Spinx and the tire store and it
12 happened right along in there.

13 Q Where did the impact happen?

14 A In the pick up truck lane.

15 Q The one that was going toward Wade Hampton?

16 A Yes.

17 Q And it was on his side of the median?

18 A Yes.

19 Q And where did the Ford Explorer come from?

20 A He just came down the northbound lanes and all at
21 once he just flipped left coming and run right smack into
22 the truck just about. It hit more on the driver's side.
23 It hit straight on.

24 Q What did you do after you saw this happen in
25 front of you?

Mark Allison - Direct

1 A I parked in the median and there was a truck
2 right ahead of me. It was a fireman, and me and him went
3 up there. I could see the guy in the Ford Explorer he was
4 moving around but the guy in the pick up truck was not
5 moving at all.

6 Q Were you in any kind of position to render any
7 aide at that time?

8 A We couldn't get to him. The truck was torn up so
9 bad you couldn't get to him.

10 Q After that did you let some law enforcement know
11 that you'd seen what happen?

12 A Yes, ma'am.

13 Q How long did you hang around the scene before
14 they took your statement?

15 A About 15 or 20 minutes. They couldn't get the
16 guy out of the truck. They had to cut the top out of it
17 to get him out and take the jaws life out and put the
18 steering wheel up.

19 Q And you stayed and watched all of that?

20 A Yes.

21 Q Let me show you something. I'm going to show you
22 State's Exhibit 10 and 8 and ask you if this is what that
23 truck looked like and if this is what you watched
24 happened?

25 A Yes, ma'am, I see it. This is his truck here.

Mark Allison - Direct

1 Q When you say his truck.

2 A The red pick up.

3 Q The pick up is ---

4 A With the top up on it right there, yes, ma'am.

5 He was the one going this way in his lane.

6 Q Would you say he was the at fault vehicle or not
7 at fault vehicle?

8 A No, not at fault.

9 Q And let's look at Exhibit 8.

10 A This is it too. It was a horrific crash. When
11 it hit it sort of jumped up. It hit more on the driver's
12 side than in the middle.

13 Q Let me ask you about the green Explorer it was
14 coming towards you?

15 A Yes, ma'am.

16 Q Was any traffic in front of the green Ford
17 Explorer?

18 A No.

19 Q None what so ever?

20 A You know there might be one on the other side but
21 I didn't know why he turned like that to be honest with
22 you.

23 Q You gave a written statement ---

24 A I gave a witness statement about 20 minutes,
25 Trooper Vocklan I believe his name is.

Mark Allison - Cross

1 Q Then after that, did he put you in his car to
2 video tape your statement?

3 A I didn't know he was video but yes.

4 Q After that did you fill like you fulfill your
5 obligations?

6 A Yes, the ambulance and stuff had got there so I
7 did leave right after that. I moved my car so the fire
8 trucks can get in.

9 Q Please answer any questions that Mr. Chambers
10 might have.

11 CROSS-EXAMINATION

12 BY MR. CHAMBERS:

13 Q. Mr. Allison, the green car the Ford Explorer that
14 you saw cross the lane, it also sustained a tremendous
15 amount of damage; is that correct?

16 A It did.

17 Q An the damage was primarily on the driver's side
18 of that vehicle, correct?

19 A Yes.

20 Q And you said that you saw the person inside that
21 car, Mr. McCall, moving around some but he never got out
22 of the vehicle?

23 A No, he didn't.

24 Q The fire people had to use equipment to get him
25 out of the vehicle, correct?

Greg Certain - Direct

1 A I don't know about that. I never did see him.
2 That's the first time I seen him in my life.

3 MR. CHAMBERS: That's all the questions I
4 have.

5 MS. DRAWDY: May he be excused from his
6 subpoena, sir?

7 MR. CHAMBERS: No objection.

8 THE COURT: Thank you, sir.

9 MS. DRAWDY: The State call Trooper Greg
10 Certain.

11 THE CLERK: If you could come forward and be
12 sworn.

13 GREG CERTAIN, having been duly sworn,
14 testified as follows:

15 Thank you. You may be seated. Please state
16 your name for the record.

17 THE WITNESS: Greg Certain.

18 DIRECT EXAMINATION

19 BY MS. DRAWDY:

20 Q Trooper Certain, are you with the highway patrol?

21 A Yes, I am.

22 Q Were you one of the troopers who responded to
23 this scene?

24 A Yes, I was.

25 Q Were you in contact with either of the drivers?

Greg Certain - Direct

1 A No, I did not.

2 Q What were you asked by your supervisors to do?

3 A To photograph and document the scene of the
4 crash.

5 Q Do you have any idea of how many photographs you
6 took?

7 A No, I have no idea.

8 Q I'm going to show you some of them. Among them
9 are the photographs that I just show this witness and this
10 would be State's Exhibit 2 through 25. Have you had an
11 opportunity to review all the photographs that you took?

12 A Yes.

13 Q And all the photographs that you took, are they a
14 fair and accurate representation of what you saw at the
15 scene that night?

16 A Yes, they are.

17 Q Or that evening. Is there a problem with your
18 photographs?

19 A The day on the actual printout is incorrect.

20 Q Did you use a camera that had a time and date
21 stamp on it?

22 A Yes.

23 Q Tell me what happened.

24 A The cameras sit in that car and they are battery
25 operated. You change the battery or it goes dead. It

Greg Certain - Direct

1 changes the date on the actual screen so it's showing a
2 different date than the actual date of the crash.

3 Q So what was the date it show on the screen?

4 A It shows March 2nd.

5 Q And you didn't notice that until after they
6 printed?

7 A Correct.

8 Q But the accident in fact happened on March 4th?

9 A That's correct.

10 Q But that does not alter what is in the
11 photographs?

12 A Correct.

13 Q These photographs were taken on what date?

14 A On the 4th.

15 MS. DRAWDY: Your Honor, we'd like to move
16 State's Exhibit 2 through 25 into evidence at this time.

17 MR. CHAMBERS: No objection.

18 THE COURT: Alright, State's 2 through 25 are
19 in evidence.

20 (Photographs marked as State's Exhibit Nos 2
21 through 25 for identification are admitted into evidence.)

22 BY MS. DRAWDY:

23 Q Is that all you did at the scene?

24 A Yes.

25 Q And how long were you at the scene?

Allen Hall - Direct

1 A Probably two or three hours.

2 Q Some of the photographs you took went into the
3 hours of dark; is that correct?

4 A Correct. There's some in the daylight and others
5 that went into the dark as the date went on.

6 Q Thank you. Please answer any questions
7 Mr. Chambers might have.

8 MR. CHAMBERS: Your Honor, I don't have any
9 questions for this witness.

10 THE COURT: Appreciate you being here, sir.
11 You can step down.

12 MS. DRAWDY: May be released from his
13 subpoena.

14 THE COURT: Okay.

15 MS. DRAWDY: The State calls Allen Hall.

16 THE CLERK: Please come up to be sworn, place
17 your left hand on the Bible and raise your right.

18 ALLEN HALL, having been duly sworn, testified
19 as follows:

20 Thank you. You may be seated. Please state
21 your name for the record.

22 THE WITNESS: Allen Hall.

23 THE CLERK: Thank you.

24 DIRECT EXAMINATION

25 BY MS. DRAWDY:

Allen Hall - Direct

1 Q Good afternoon, Mr. Hall.

2 A Hello.

3 Q Mr. Hall, can you tell me what your profession
4 is?

5 A I'm a firefighter lieutenant EMT.

6 Q How long have you been an EMT?

7 A Twenty years.

8 Q What exactly is an EMT and what type of duties do
9 you have as an EMT?

10 A Emergency medical technician and we respond to
11 traumatic and injuries, sick or injured.

12 Q Do you work crash scenes like this a lot?

13 A I do.

14 Q You've seen a lot?

15 A Yes.

16 Q Are you trained in lifesaving techniques when
17 someone is seriously injured in one of these crashes?

18 A Yes, I am.

19 Q Are you involved in this in connection with your
20 employment?

21 A Not at all.

22 Q Tell me how you are involved in this accident?

23 A My girlfriend and I was traveling to dinner that
24 evening and we happened to be the vehicle behind the crash
25 victim.

Allen Hall - Direct

1 Q What was the crash victim driving?

2 A A burgundy reddish Chevrolet pick up truck.

3 Q And if you would, using State's Exhibit 1 tell
4 the jury where you were traveling and explain exactly what
5 you witnessed. If you'd like to step down, you can do
6 that.

7 A We were in the inside lane driving southbound.
8 Once we got about this area right here, I noticed the
9 green Ford Explorer was coming northbound and there's a
10 curve there. You can actually see it and if you've driven
11 it, you know it's there. He made not attempt in the
12 curving turning at all, he just came straight. I seen him
13 coming straight and by the time he got into the median I
14 know that the crash was inevitable, which there was no on
15 coming traffic in front of the green Ford Explorer.

16 Q There was room for you to go there.

17 A Exactly. I pulled to the left so the impact
18 would not come into my vehicle, but the debris from the
19 crash did fly across my vehicle.

20 Q And to be clear, this is a photo that's taken at
21 some other time, this is not the traffic that you saw on
22 the road ---

23 A Not at all, no. There was no traffic in front of
24 the green Ford Explorer. That's why I chose to take the
25 left into the on coming traffic lanes. And then after the

Allen Hall - Direct

1 impact, I went ahead and turned around the crash and
2 parked in the median and got out of my vehicle.

3 Q And what did you do at that point?

4 A At that point I came to the burgundy red
5 Chevrolet pick up truck.

6 Q Where was it?

7 A It was approximately right there. It was still
8 in the lane and it was turned sideways where it was
9 blocking basically the whole southbound travel right
10 there.

11 Q Can you describe the damage that you observed in
12 that truck?

13 A It was complete total loss. The engine
14 compartment, the front bumper was basically on the victim
15 on his lower extremity.

16 Q What was the first thing you did when you went to
17 the truck?

18 A He had his daughter with him and she was
19 basically distraught and she was crying and she had -- if
20 I can recollect, she had a bloody nose or bloody mouth.
21 She was bleeding from the face but she was ambulatory.
22 She was screaming and crying and distraught. So I got her
23 out of the vehicle because it was smoking like it was
24 going to catch on fire. I got her out of the vehicle,
25 took her to my girlfriend and she got in my truck and they

Allen Hall - Direct

1 sat there. And then I went back to her dad and I could
2 not make entry on his side because of the damage so I got
3 into the back of the truck, the bed of the truck and came
4 in through the back glass.

5 Q Did you do all of this before making any phone
6 calls for help?

7 A As I was doing it I had my fire department radio
8 with me so I was calling Greenville dispatch at the same
9 time. And then once I got in there and seen what I had, I
10 radioed back and gave them a patient report.

11 Q What did you report?

12 A I reported a priority 1 patient.

13 Q What does that mean?

14 A It's a triage system that Greenville County and
15 all of the county systems use. Triage means basically we
16 either they're walking wounded or a priority 2 is maybe
17 both legs and a priority 1 is near death and a priority 4
18 is dead.

19 Q And what did you observe about the man in the
20 truck?

21 A He was unconscious. At first when I got there he
22 was mumbling some words. I couldn't make out too much.
23 He was laying slumped over towards the passenger's side.
24 Like I said the dash and all of this on the vehicle was
25 down on top of his lower extremities, his legs, so he was

Allen Hall - Direct

1 entrapped pretty heavily.

2 Q I'm going to show you State's Exhibit 10 and I
3 know this is a farther away view up close, but does this
4 show the intrusion on the side of the vehicle?

5 A Somewhat, yes. This is during basically -- they
6 had already peeled the roof off so this was still a little
7 bit opened already.

8 Q You couldn't get him out?

9 A Absolutely not.

10 Q How was he breathing?

11 A About five to eight times a minute.

12 Q Is there a term for that?

13 A Yes.

14 Q What is that?

15 A He was hypoxic. The breathing that he was
16 breathing was what we call agonal respiration. Agonal
17 respiration are basically they're not good enough, if you
18 will. Respiration that normal healthy people have is 12
19 to 20 a minute and he was breathing about five to six
20 times a minute. It wasn't sufficient. He wasn't moving
21 oxygen.

22 Q In your training, what did you need to do for a
23 patient like that?

24 A He needed to be innobated (ph).

25 Q Did you have the ability to do that?

Allen Hall - Direct

1 A I absolutely did not, no.

2 Q Is there something that you do in the interim to
3 assist somebody like that?

4 A Well, basically, all I could do was I checked for
5 a revised trauma score and then I called that in and then
6 I told them we had a priority 1 patient and I held his
7 head in manual stabilization to protect his spine, his
8 neck and his spinal column for any further injury and to
9 help him breathe better also.

10 Q And how long did you hold that position until
11 help got there?

12 A It seemed like forever. It was probably 10, 15
13 minutes roughly.

14 Q And how did you access him to do that?

15 A Through the back windshield.

16 Q You climbed up in the back of the truck?

17 A Yes, ma'am.

18 Q When EMS arrived, can you describe the sequence
19 of what happened?

20 A Basically supervisor with EMS showed up in what
21 they call a QRV, it's a little pick up truck. He showed
22 up first and we know each other so he come to me as I'm
23 standing in the back and he asked me what I have and I
24 told him to get in the back of the truck that's the only
25 way we can access him. So he come and got up with me and

Allen Hall - Direct

1 he was standing there and I was telling him what we had
2 and tried to get a plan together basically.

3 Q Did some point did EMT's arrive with EMS?

4 A Yes.

5 Q And what time did you turn care over to them?

6 A I basically turned care over to the supervisor
7 when he first got there because he had equipment and I was
8 there to assist him until the other paramedics and the
9 ambulance and the fire department got there to start
10 extrication.

11 Q And you mentioned a trauma score, what is a
12 trauma score?

13 A It's basically psychological evaluation of a
14 trauma patient. We take the glasco trauma score and the
15 respiration and the systolic blood pressure and the heart
16 rate and that's a cumulative score. A 12 is what you and
17 I are right now on the revised trauma score.

18 Q And what was the driver of this vehicle?

19 A A trauma score of 9.

20 Q What is a 9?

21 A They called the coroner to the scene at a trauma
22 score of 8 so he was near death.

23 Q Had he not received pretty much immediate
24 attention, what would have happened to this man?

25 A He would have died. That's my opinion.

Allen Hall - Direct

1 Q Did you see the driver of the green vehicle at
2 all at the scene?

3 A No, ma'am.

4 Q So you were focused on the man in the pick up
5 truck?

6 A Yes, ma'am.

7 Q About how long did you stay at the scene?

8 A At least an hour, maybe an hour and a half.

9 Q Were you there long enough to see him brought out
10 of the vehicle?

11 A No. When they were doing the extrications, I had
12 to leave.

13 Q So you left before this photograph was taken that
14 I showed you which is State's Exhibit 10?

15 A Yes, ma'am.

16 Q Please answer any questions Mr. Chambers might
17 have.

18 MR. CHAMBERS: I don't have any questions.

19 THE COURT: Thank you for being here.

20 MS. DRAWDY: Can he be released?

21 THE COURT: Yes, ma'am.

22 MS. DRAWDY: The State calls Dana Suddeth.

23 THE CLERK: Please place your left hand on
24 the Bible and raise your hand.

25 DANA SUDDETH, having been duly sworn,

Dana Suddeth - Direct

1 testified as follows:

2 Thank you. You may be seated. Would you
3 please state your name for the record.

4 THE WITNESS: Donna Suddeth.

5 DIRECT EXAMINATION

6 BY MS. DRAWDY:

7 Q Good afternoon, Mrs. Suddeth.

8 A Good afternoon.

9 Q Mrs. Suddeth, would you give your full name?

10 A Dana Skinner Suddeth.

11 Q And are you married to Robert Suddeth?

12 A I am.

13 Q How long have you been married?

14 A 21 years.

15 Q Do you have children?

16 A We have four.

17 Q What are their names and ages?

18 A Julia our oldest is 18, [REDACTED] just turned 15 and
19 we have twins that are 10.

20 Q I want to take you back to March 4, 2012. Was
21 your husband the man in the red car?

22 A He was.

23 Q Can you tell us how you found out about this
24 accident?

25 A I was leaving home and I was going to Rock's

Dana Suddeth - Direct

1 parent's house to pick up my twins.

2 Q Rock is how you refer to your husband Robert?

3 A Yes, we call him Rock.

4 Q It's okay to call him Rock.

5 A I was on my way to Rock's parent's house to pick
6 up the twins for church and I had gone up the hill not
7 even a block and Julia called, my daughter, that was in
8 the truck. She was crying and hysterical. She was saying
9 there was an accident and I was asking her if she was okay
10 and she said yes, and I asked was her dad okay and for
11 some reason I could not hear her answer every time I tried
12 to ask her about her dad.

13 Q Where had been? Do you know where they had been?

14 A They had been to Furman. Julia played on a
15 travel volleyball team at Furman and on Sunday afternoons
16 Rock always took her to practice and they were on their
17 way home because after that she has youth group at church
18 and they were on their way back.

19 Q So how long did you speak with her on the phone?

20 A Probably a minute trying to understand what she
21 said. There was a man with her and he finally got on the
22 phone. He could understand what I was saying but I
23 couldn't understand him because of the phone. He ended up
24 calling me back from another phone to tell me I needed to
25 come there right away.

Dana Suddeth - Direct

1 Q And did he tell you where there was?

2 A Yes.

3 Q And as a result of that, where did you go?

4 A I went towards Cherrydale. I went down Wade
5 Hampton and turned on Rutherford Road and then out towards
6 Cherrydale.

7 Q Do you recognize what's depicted on State's
8 Exhibit 1?

9 A Yes.

10 Q What is that?

11 A That's Pleasantburg 291.

12 Q Does that have significance to you?

13 A Yes.

14 Q Is that where the crash happened?

15 A Yes.

16 Q Can you just step down and point where you came
17 from and where you parked?

18 A I was coming from this direction and I saw the
19 accident from the road so I pulled into the median
20 somewhere in here. I'm not exactly sure where. The
21 accident was somewhere in here so I pulled into the median
22 and got out.

23 Q Describe what you saw when you drove up?

24 A When I first drove up, I saw Julia's side of the
25 vehicle which was not the side that was affected the most,

Dana Suddeth - Direct

1 but I still know it was bad.

2 Q Did you find Julia?

3 A I did. There were some people sitting on the
4 side of the road with her that hollered for me to come
5 over to her first because I was going straight to Rock's
6 truck and they hollered for me to come over to see her
7 because she was strapped down on the stretcher and she was
8 hollering for me so I went over there to see her first on
9 the side of the road.

10 Q And how did you find her to be?

11 A She was shaken up, crying. She kept asking about
12 her dad.

13 Q Were you ever able to go over to the truck?

14 A I was not. A police officer or someone kept
15 stopping me from going all the way up to where he was.

16 Q And was your daughter eventually transported to
17 the hospital?

18 A She was.

19 Q What did you do at that point?

20 A At the wreck?

21 Q Yes. What did you do after she was transported
22 to the hospital?

23 A I waited on my husband to be taken out of the
24 truck and as soon as his ambulance left, by this time my
25 brother had gotten to the scene of the accident and he

Dana Suddeth - Direct

1 carried me to the hospital. So I went to the hospital.

2 Q What happened in the hospital?

3 A I went into the pediatric ER and that's where
4 they had Julia. Where they had Rock, I wasn't allowed to
5 be back there. I waited with Julia to be checked out and
6 I waited on information on how Rock was doing.

7 Q Approximately how long was it that night before
8 you were able to see Rock?

9 A Hours. I know we were in the pediatric ER for
10 several hours. I didn't hear from anybody for a long
11 time. Julia's doctors began going back and forth trying
12 to find information for me because they were so focused on
13 Rock. I appreciate that they -- I didn't know what was
14 going on so she began to find out information to bring to
15 me. Eventually when the doctor's came out, it was, I
16 don't know, maybe four hours. I don't know. It was later
17 when they came out and told me of his injuries and they
18 were moving him to ICU upstairs and so while they
19 transported him and got him set up, we had to wait in the
20 ICU waiting area.

21 Once he was set up in the ICU and they had
22 everything ready, then they allowed us to come in, his mom
23 and I to come in.

24 Q Were you able to speak to your husband then?

25 A We spoke to him but he didn't respond.

Dana Suddeth - Direct

1 Q Was he hooked up to some equipment?

2 A He was.

3 Q Can you describe it?

4 A A ventilator and he was on a pic line up here.
5 He had some other IV's going in him. He had a rod going
6 through his leg to stabilize his leg. I believe he had
7 something on one foot.

8 Q Let's move on to making a little progress. How
9 long was it that you were able to speak with him and he
10 could respond?

11 A This was a Sunday night, they took out the
12 ventilator the second Friday that we were in ICU so that
13 was almost two weeks.

14 Q Were you able to communicate with him then?

15 A I was able to talk to him. He was a little bit
16 raspy and I couldn't understand him because he had had the
17 ventilator.

18 Q How long was he in ICU?

19 A He got out that Monday -- Tuesday, so it was
20 about 16 days.

21 Q And where was he then?

22 A He was on the main floor of the hospital to about
23 seven days and then we were moved to Roger C. Peace.

24 Q How many days was he in the hospital before he
25 went to Roger C. Peace?

Dana Suddeth - Direct

1 A Three weeks.

2 Q And then he went to Roger C. Peace?

3 A Yes.

4 Q That's for rehabilitation; is that correct?

5 A Yes.

6 Q What was his status then? Can you describe what
7 he was allowed to do and what he wasn't allowed to do, his
8 restrictions?

9 A He wasn't able to do anything because his hip had
10 been put back together basically with plates. He was told
11 that he could not sit up for 12 weeks. He had to be lying
12 down and could not go about the 60 degree angle for 12
13 weeks while that healed. He could not get out of the bed
14 to go to the bathroom. He could not sit all the way up to
15 eat. In order for us to move him to another bed to a
16 reclining wheelchair, it took four of us. We each had a
17 corner of the sheet and pick it up and move him over.

18 Q How long was he in Roger C. Peace?

19 A About three months.

20 Q To this day, does your husband remember anything
21 about the crash?

22 A He doesn't.

23 Q Do you remember the date that he was allowed to
24 come home?

25 A It was right at Father's day. It was in June

Dana Suddeth - Direct

1 around the 17th, I think.

2 Q And what were his capabilities at the time he
3 came home?

4 A He came home on crutches. I think it was
5 suggested he be a wheelchair and he wouldn't so he came
6 home on crutches. We moved a bed downstairs because we
7 have steps in our house so his bedroom was downstairs for
8 a few months and we had something at our steps in front of
9 our house to help him get in. He had to be driven, he
10 couldn't drive anywhere that he went. He went to rehab,
11 outpatient rehab for maybe a month or two months, I'm not
12 sure, and then he worked out at home as well with some
13 things that Roger C. Peace gave him to work out with.

14 Q Tell me about your husband and what his physical
15 condition was before the wreck?

16 A He loved to work out. He has always worked out
17 at the gym about four days a week. At the time he was
18 into mountain biking. He might work out four at the gym
19 and go mountain biking two days a week or trails around
20 our house. He's outside all the time. He plays
21 basketball, football and baseball with our kids. He rides
22 horsing, likes to canoe, anything outdoors. He loves it
23 all.

24 Q So he was in really good health?

25 A He was.

Dana Suddeth - Direct

1 Q Do you contribute that to his survival?

2 A I do.

3 Q Please answer any questions Mr. Chambers might
4 have.

5 MR. CHAMBERS: I don't have any further
6 questions.

7 THE COURT: Thank you Mrs. Suddeth.

8 Alright ladies and gentlemen, we're going to
9 adjourn for the evening. If you would please be back here
10 at 9:15 we'll try to start at 9:30 promptly. Please be on
11 time, not out of consideration for me and the parties but
12 out of consideration to one another because we won't be
13 able to start without you. If one of you is not here then
14 we'll just simply wait until you get here and you'll have
15 to suffer the glares and looks of your fellow jurors when
16 you come into the jury room.

17 Also tonight, I'm going to tell you again,
18 don't discuss the case with those who may invite you to
19 discuss the case. Watch some playoff basketball, read a
20 book, have some fun but don't discuss the case. Y'all
21 have a great evening.

22 (Jury exits the courtroom for the evening.)

23 Alright, we're back on the record tomorrow at
24 9:30. I'll be here much earlier for that so if you need
25 me for anything, please come get me. If y'all need to go

Dana Suddeth - Direct

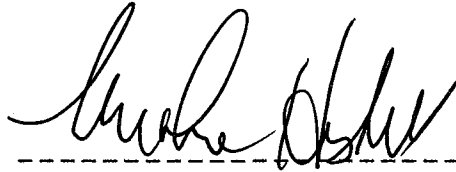
1 on the record to handle any other issues, let me know and
2 we'll try to go on before 9:30.

3 (Court adjourned for the evening.)
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Dana Suddeth - Direct

1 I, the undersigned Caroline Hiskell, Official
2 Court Reporter for the Thirteenth Circuit of the State of
3 South Carolina, do hereby certify that the foregoing is a
4 true, accurate, and complete transcript of record of all
5 proceedings had and evidence introduced in the trial of
6 the captioned case, relative to appeal, in Court of
7 General Sessioons, Greenville County, this 12th day of
8 May, 2015.

9 I do further certify that I am neither of kin,
10 counsel, nor interest to any party hereto.

11
12
13 

14 Caroline Hiskell
15
16
17
18
19
20
21
22
23
24
25

Dana Suddeth - Direct

STATE OF SOUTH CAROLINA : GENERAL SESSION
: 2012-GS-23-10242
: TRANSCRIPT RECORD

vs

Terry McCall

May 13, 2015 - Day 2
Greenville, South Carolina

BEFORE: The Honorable Robin Stilwell, Judge

A P P E A R A N C E S:

Sara Lee Drawdy, Esquire
Stan Overby, Esquire
Attorney for the State

Jake Erwin Esquire
Randy Chambers, Esquire
Attorney for the Defendant

Caroline Hiskell
Thirteenth Circuit Court Reporter

Dana Suddeth - Direct

I N D E X

WITNESSES

DIR CR RED REC

Sally Clark	180			
James Jones	184			
Ryan Freeman	200	206		
Wes Hiatt	208	215		
David MacAlhaney	218	236		
Ashley Norman	240	247	247	
Dan Bannister	252			
Luke Perry	255			
Sgt Rivers	257			
Amy Stevens	261			
Wendy Bell	266	268		
Marybeth McCormick	269			
Carmen Tucker	273			
Shanna Sorrells	282	297	299	

State versus McCall

P R O C E E D I N G S

THE CLERK: All rise, the Honorable Robin Stilwell presiding.

THE COURT: Thank you. Caroline, let me know when you're record.

We're back on the record and Mr. Chambers, I believe you indicated Mr. McCall has a motion.

MR. CHAMBERS: I'll repeat what I said earlier and then I'll turn it over to Mr. McCall. He has summoned me back this morning saying that he needed to talk to me and has told me that he feels I am not doing an adequate job. He doesn't want me to represent him anymore. I'll let him state what his reasons more but he made statements that led me to believe that my continuance as an attorney basically would put me in jeopardy as far as allegations he planned to make against me. So I think he has created a conflict between us.

He clearly does not want to me to continue as his lawyer and it's my understanding that the wants the Court to grant him a continuance and allow him to hire an attorney and with that I will let him say what he has to say.

THE COURT: Alright, Mr. McCall.

DEFENDANT MCCALL: Yes, Your Honor, I filed a motion to relieve Mr. Chambers back in March and I have

State versus McCall

1 relieved him on some other charges and yesterday we got
2 the indictment, it's the first time I have ever received
3 it. I felt like we weren't prepared enough and I want to
4 retain me someone else as counsel.

5 I don't know if it may be my feeling but I
6 talk to my parents and they feel it may be in my best
7 interest to hire someone else because there's a conflict
8 between us that my dad feels like I'm not going to
9 represented in the best defense.

10 I feel I need to get someone -- to retain a
11 lawyer.

12 THE COURT: Mr. McCall, I'm going to have to
13 deny your motion.

14 DEFENDANT MCCALL: I can't hire a lawyer?

15 THE COURT: It's too late for you to be
16 making that decision. I recognize you have come before
17 the Court before and you have made a motion for
18 Mr. Chambers to be relieved and at that time, if I'm not
19 mistaken, you ask that he remain on this case because you
20 were satisfied his services.

21 I don't know what type of impasse that has
22 become between the two of you. I will consider relieving
23 Mr. Chambers as your attorney of record, if you want, but
24 you will be required to proceed pro se for the remainder
25 of this trial, sir.

State versus McCall

1 DEFENDANT MCCALL: If that's what I got to
2 do, that's what I got to do.

3 THE COURT: Would you like Mr. Chambers to
4 continue to stay as stand by counsel?

5 DEFENDANT MCCALL: No, sir.

6 THE COURT: You understand that you have a
7 right to have an attorney represent you?

8 DEFENDANT MCCALL: Yes, sir.

9 THE COURT: And you understand that if you
10 decide and determine ---

11 DEFENDANT MCCALL: I don't want him to
12 represent me, though.

13 THE COURT: You understand that if you decide
14 to represent yourself you assume certain risks in doing
15 so, do you understand?

16 DEFENDANT MCCALL: I do, but I'm not going to
17 stand here and not have an attorney present when I have a
18 constitutional right to have a lawyer. I'm asking you to
19 let me hire an attorney.

20 THE COURT: Yes, sir. You have an attorney.

21 DEFENDANT MCCALL: He was appointed and I'm
22 asking for me to be able to hire my own lawyer. I had a
23 conflict yesterday come in and you allowed an indictment
24 to come that I never seen before. I can't believe you
25 allowed that. And indictment that I wasn't prepared and

State versus McCall

1 all the other evidence that he's never reviewed. Come on,
2 man. This is uncalled for. This is making a mockery of
3 the court.

4 THE COURT: I understand that you take
5 exception to my ruling and I respect that. My question is
6 you clear that you take exception to the ruling I made,
7 but that's not a reflection of the work that your attorney
8 did in trying to exclude it and have the case dismissed.

9 DEFENDANT MCCALL: He never did.

10 THE COURT: He certainly did.

11 DEFENDANT MCCALL: Tried to dismiss what?

12 THE COURT: This case based on an inefficient
13 and ineffective indictment. He made a compelling
14 argument. He made all the appropriate legal arguments. I
15 just happen to rule against you. That's not a reflection
16 on his abilities as an attorney.

17 DEFENDANT MCCALL: That's not what I'm upset
18 about. It's not your ruling why I'm upset, it's the fact
19 I have a conflict from the past with him and I didn't get
20 to be heard in relation to it and he came in yesterday and
21 started the trial without hearing my motion. And the
22 rules on the motion was denied -- violated. I was
23 supposed to be heard on the motion first.

24 MR. CHAMBERS: Your Honor, I would join him
25 in the motion to relieve me from this trial and allow him

State versus McCall

1 to proceed pro se because based on everything he has just
2 said, I question whether I can effectively represent him
3 anymore. I'm certainly prepared and I thought I was doing
4 a pretty good job. I didn't know anything about a motion,
5 the motion that he's talking about now.

6 It's clear to me at this point that rather
7 than allowing me to effectively represent him through the
8 remainder of this trial, he's trying to build some kind of
9 a record so he can either on appeal or a PCR or something
10 down the road and try to get any conviction overturned
11 which will result basically in throwing me under the bus
12 and saying that somehow I didn't do the job I was supposed
13 to do.

14 So if he wants to proceed pro se, I certainly
15 would join him in that motion. I have other places I
16 could be and things I could be doing.

17 THE COURT: Okay. Mr. McCall, I'll give you
18 the last word, sir. Any more arguments you would like to
19 make?

20 DEFENDANT MCCALL: I would just like for him
21 to be relieved.

22 THE COURT: Again, I'm going to ask you this
23 as a consequence of relieving Mr. Chambers that you will
24 be required to proceed pro se.

25 DEFENDANT MCCALL: I hear what you're saying.

State versus McCall

1 You're forcing me to go forward.

2 THE COURT: I most definitely am.

3 DEFENDANT MCCALL: Alright.

4 THE COURT: You have waited until we have
5 impaneled a jury. You have waited until we have begun the
6 presentation of evidence.

7 DEFENDANT MCCALL: I told him yesterday that
8 I didn't want him to represent me.

9 MR. CHAMBERS: You did not.

10 DEFENDANT MCCALL: Yes, I did. We had a
11 conflict in there yesterday morning, Randy. And I said
12 are you throwing me under the bus and you said, that's
13 what you think I am.

14 MR. CHAMBERS: Actually you said I don't want
15 you to throw me to the wolves and I said that was
16 insulting and I don't want to talk about it any more and
17 you said sorry. You told me you were just scared because
18 you were on trial for your life and you never gave me any
19 indication that you didn't want me to represent you but
20 that's fine. Certainly, I would like to be relieved.

21 DEFENDANT MCCALL: I did. I did. I felt
22 like I was being thrown under the bus.

23 THE COURT: Okay. I understand that. I want
24 you to answer my questions. You understand that you would
25 be proceeding on your own and you assume certain risks

State versus McCall

1 because you may not have the knowledge and experience that
2 an attorney can afford you in the trial of a case.

3 DEFENDANT MCCALL: I understand that.

4 THE COURT: And you are willing to assume
5 those risks, sir?

6 DEFENDANT MCCALL: No, I am not.

7 THE COURT: Do you want me to appoint a
8 public defender to sit with you?

9 DEFENDANT MCCALL: Out of the public
10 defender's office.

11 THE COURT: To assist you in the trial of the
12 case. Now, he's not going to try your case. He will
13 assist you in answering any questions that you have
14 because he can't possibly come up to speed in the case in
15 the next 10 minutes.

16 DEFENDANT MCCALL: He can represent me then.

17 THE COURT: I'm telling you that he can't
18 possibly represent you in the this period of time.

19 DEFENDANT MCCALL: Give us a continuance.
20 You're not going to give us a continuance in the presence
21 of this indictment that I just got served with yesterday?

22 THE COURT: No, sir, I'm not. I'm making
23 that very clear to you and you don't have to ask me again.

24 DEFENDANT MCCALL: I'm asking you again.

25 THE COURT: The answer is no again. Do you

State versus McCall

1 want me to have a public defender sit with you in this
2 trial so that you can ask him questions about legal issues
3 that may arise?

4 DEFENDANT MCCALL: I'm going to leave that up
5 to you, Judge.

6 THE COURT: This is what I'm going to do.
7 Mr. Chambers, I'm going to relieve you as counsel in this
8 case. Would you please ask the public defender to send
9 someone to the courtroom to sit with him and answer and
10 address any questions that he may have during this trial?

11 MR. CHAMBERS: Yes, Your Honor.

12 THE COURT: So you are relieved of your
13 duties with exception of doing that service for me.

14 DEFENDANT MCCALL: He's taking all the
15 evidence with him. He's leaving me with nothing.

16 THE COURT: You can exchange that with
17 whatever lawyer necessary.

18 MR. CHAMBERS: Yes, sir, Your Honor.

19 THE COURT: Mr. McCall, what I'd like you to
20 do is you can go back to the cell and we'll be adjourned
21 until someone comes back to assist you in that regard.

22 If you would let the jury know that we have
23 some legal mattes that we are taking up.

24 (Court was adjourned.)

25 THE BAILIFF: All rise.

State versus McCall

1 THE COURT: Take you seats please.

2 Okay. We are back on the record. I believe
3 the record speaks for itself with respect to what has
4 transpired. I will state that we conducted a hearing in
5 accordance with Foretto(ph) versus California and I have
6 made a determination that the waiver of prior counsel has
7 been made knowingly and intelligently and that the
8 defendant does have a right to proceed pro se. Also to
9 protect his stated interest and in order to protect his
10 procedural rights and his constitutional rights, I have
11 appointed Mr. Jake Erwin of the Greenville County bar as
12 stand by counsel to assist him in the conduct of the case.

13 Mr. Erwin's duties with respect to his
14 representation and assistance of Mr. McCall shall be
15 present to answer any questions and to assist in any way
16 that you feel is -- each of you feels is necessary.

17 I will also say, Mr. Erwin, to the extent
18 that you feel it is necessary to appropriate, I'll allow
19 you to participate in the trial. However, I am not
20 suggesting that you should or that it appropriate that you
21 will. I'm just giving you that leeway. Each of you can
22 make that decision as you go forward in this case.

23 DEFENDANT MCCALL: Your Honor, I would like
24 to say something. I am not waiving my rights to counsel.

25 THE COURT: Yes, sir. I've also held a

State versus McCall

1 hearing in accordance with State versus Fuller, 523 SE 2nd
2 168. In this case there has been a request for relief of
3 counsel during the pendency the case after the jury had
4 been impaneled and after the presentation of a significant
5 and substantial amount of evidence. It is within the
6 discretion of a trial judge to grant the motion for the
7 relief of counsel during the pendency of the proceeding
8 and I've elected to do that based on the totality of the
9 circumstances.

10 I find specifically that the motion was
11 ill-timed and that the ultimate end of a motion to
12 continue and a motion for relief of counsel is to delay
13 and hinder the administration of justice.

14 DEFENDANT MCCALL: I disagree, Your Honor.

15 THE COURT: I will tell you the continuance
16 of this case would have a significant prejudicial effect
17 on the state because the State had subpoenaed all of its
18 witnesses which are substantial amount, over 40 in reading
19 the witness list. Also, the defendant has had the
20 opportunity to witness and view a specific amount of
21 presentation of the case to include all of its tactical
22 proceedings in opening statements and it's order and
23 method of presentation of evidence.

24 In this case, I will tell you without
25 reservation and unequivocally that my only interest is to

State versus McCall

1 ensure that both parties get a fair trial.

2 If at the conclusion of this case, Mr. McCall
3 you are acquitted, then I will walk away happy knowing
4 that everyone was afforded a fair trial. So I have not
5 stake in the outcome of this trial. I assure you I have
6 no interest.

7 None of the rulings that I make are designed
8 to prejudice or to profit either party. They are rulings
9 that I make are in my estimation in keeping with the
10 established law, procedure in the State of South Carolina
11 and in the United States of America. Therefore, we will
12 proceed in the trial of this case. When the jury comes
13 in, I will tell them, pursuant to your request
14 Mr. Chambers has been relieved and you are representing
15 yourself. Mr. Erwin of the Greenville County bar is ---

16 DEFENDANT MCCALL: I didn't ask to represent
17 myself.

18 THE COURT: You did, sir.

19 DEFENDANT MCCALL: No, I didn't.

20 THE COURT: I will further state that you may
21 find yourself in an uncomfortable position ---

22 DEFENDANT MCCALL: You're forcing me.

23 THE COURT: You are in an uncomfortable
24 position as a consequence of your own conduct.

25 DEFENDANT MCCALL: No, it's the conduct --

State versus McCall

1 THE COURT: As the sole and exclusive
2 consequence of your own conduct.

3 DEFENDANT MCCALL: He had told you on the
4 record that he had problems and you didn't want to let me
5 relieve him and now all of sudden you decide to relieve
6 him.

7 THE COURT: Mr. McCall, I'm not arguing with
8 you.

9 DEFENDANT MCCALL: I'm not arguing with you.

10 THE COURT: You could have kept Mr. Chambers.

11 DEFENDANT MCCALL: I didn't want to keep
12 someone who is not in my best interest when we just seen
13 the charges yesterday, never have seen them until
14 yesterday.

15 THE COURT: I understand that, sir, and
16 you've established a record in that regard and I thank you
17 for that.

18 You may bring in the jury.

19 MR. CHAMBERS: Your Honor, before you do
20 that, I just want to state for the record that I am turned
21 over the entirety of my file to Jake Erwin. He has that
22 in his possession. And also to my knowledge Mr. McCall
23 has been provided with all of the discovery material that
24 had been provided to me by the solicitor's office prior to
25 today's day. Everything should be there.

State versus McCall

1 THE COURT: Thank you, Mr. Chambers, I
2 appreciate that.

3 DEFENDANT MCCALL: I don't know what's what
4 here. I'll have to go through everything.

5 THE COURT: Bring the jury in.

6 (Jury enters the courtroom.)

7 Good morning ladies and gentlemen. I want to
8 thank you first and foremost for your patience. I know
9 that each of you were here on time at 9:30 ready to go. I
10 know some of you had some trouble getting here this
11 morning because of traffic but y'all arrived in time for
12 us to start at 9:30.

13 I'm sorry we delayed but I had some legal
14 issues that I had to take up before we got started this
15 morning. As you may note, Mr. Chambers is no longer in
16 the courtroom. Mr. McCall made a motion to have
17 Mr. Chambers to be relieved as counsel and I granted that
18 motion. As a consequence of granting that motion,
19 Mr. McCall is representing himself in this matter. I have
20 asked Mr. Jake Erwin of the Greenville County bar to act
21 as stand by counsel for Mr. McCall, which means he will be
22 ready and prepared to answer any questions and assist
23 Mr. McCall with any issues that may arise in the case.

24 Having said that, we will begin. I do want to
25 tell you in so far as scheduling is concerned today, we're

State versus McCall

1 going to take a long lunch from 12:30 to 2:30. I'm sorry
2 for that in advance. I had surgery on my knee two weeks
3 ago and I have to go to physical therapy. I couldn't get
4 that time changed. So I'm going to take that window time
5 to do that. Having said that, we may stay a little bit
6 late tonight. So over that period of time you can make
7 arrangements.

8 I don't anticipate we will stay much after
9 6:00. If that's a problem for you, y'all let me know, but
10 I'm thinking probably 6:00 just to make up some of the
11 time that we lost this morning and some of the time that
12 we'll lose over the lunch break.

13 Okay. Call you witness.

14 MR. OVERBY: May I please the Court, the
15 State calls Sally Wardwick Clark to the stand.

16 THE CLERK: Please come up to the stand and
17 be sworn. Please place your left hand on the Bible and
18 raise your right.

19 SALLY WARDWICK CLARK, having been duly
20 sworn, testified as follows:

21 Thank you. You may be seated. Please state
22 your name for the record.

23 THE WITNESS: Sally Wardwick Clark.

24 DIRECT EXAMINATION

25 BY MR. OVERBY:

Sally Clark - Direct

1 Q Good morning, Ms. Clark, how are you doing today?

2 A I'm doing fine.

3 Q What is your occupation?

4 A I'm deputy director administration with
5 Greenville County EMS.

6 Q And in that role, what sort of duties in
7 responsibilities do you carry?

8 A Part of my responsibilities is the custodian of
9 records for the field providers.

10 Q Do you have reports pertaining to this particular
11 case for all the patients that were involved with
12 Greenville County EMS?

13 A I do.

14 Q How many patients were there?

15 A Three.

16 Q Who prepared these reports, do you know?

17 A The field providers that attended to the
18 patients.

19 Q So each field provider who actually attended to
20 each individual?

21 A Well, there's a time and they work together for
22 the patient -- on the patient and together they complete
23 that report.

24 Q Are these reports required to be kept in their
25 regular duties?

Sally Clark - Direct

1 A Yes.

2 Q And are these reports maintained by your office
3 in the regular course of your business?

4 A Yes, they are.

5 Q Have they been altered or changed in any way as
6 far as you can tell?

7 A No.

8 Q I'd like you to highlight these reports. The
9 first has been marked as State's Exhibit No 26, what is
10 that report?

11 A This is the pateint care report for Robert
12 Suddeth.

13 Q As an initial matter, can you tell what time the
14 call itself was received by that report?

15 A The call was received at 7:45 hour.

16 Q Can you tell me what time that report was closed?

17 A It was closed on March 5th at 6:28 hours.

18 Q I'd like you to reference State's 27 at this
19 time. Who is the patient involved in that report?

20 A The report from this patient is Julia Suddeth.

21 Q And is the call time, the time of call was
22 received the same as the others?

23 A Yes, it is.

24 Q What time was that individual report closed?

25 A It was closed on March 4, at 20:55 hours.

Sally Clark - Direct

1 Q I'd like you to reference State's Exhibit No. 28
2 what is that a report of?

3 A This is a patient care report for Terry McCall.

4 Q Was the call time on that the same as the others?

5 A Yes, it was.

6 Q What time was that report closed?

7 A This report was closed on March 4th at 20:18
8 hours.

9 Q They are kept in the regular course of your
10 business?

11 A Yes, they are.

12 Q And they have not been modified or changed at any
13 way.

14 A No.

15 MR. OVERBY: At this time, Your Honor, I'd
16 like a ruling that these documents have been authenticated
17 as the records.

18 THE COURT: Any objections?

19 DEFENDANT MCCALL: No objection.

20 MR. OVERBY: For the record, Your Honor, I
21 have no further questions for Ms. Clark on this matter.

22 THE COURT: Okay.

23 DEFENDANT MCCALL: I have no questions.

24 THE COURT: Thank you. I presume that they
25 be asked that they be admitted at this time.

James Jones - Direct

1 MR. OVERBY: No, Your Honor, I just ask that
2 they be authenticated and at this time I have no further
3 questions for Ms. Clark.

4 THE COURT: Do you have any questions of this
5 witness, Mr. McCall?

6 DEFENDANT MCCALL: No questions.

7 MR. OVERBY: Your Honor, may this witness be
8 excused?

9 THE COURT: Sure. You may step down. Thank
10 you for coming.

11 MS. DRAWDY: The State calls John James.

12 THE CLERK: Please step forward to be sworn
13 in. Place your left hand on the Bible and raise your
14 right.

15 JOHN JAMES, having been duly sworn, testified
16 as follows:

17 Thank you. You may be seated. Please state
18 your name for the record.

19 THE WITNESS: Lieutenant John James.

20 DIRECT EXAMINATION

21 BY MS. DRAWDY:

22 Q Good morning, Lieutenant James.

23 A Good morning.

24 Q Do you also work for Greenville County EMS?

25 A Yes, ma'am, I do.

James Jones - Direct

1 Q How long have you been employed there?

2 A A little over 22 years.

3 Q What are your current positions and
4 responsibilities?

5 A My position is (inaudible) shift commander and I
6 am basically in charge of the operational shift during my
7 duty shift which is usually 12 hours long.

8 Q What is your background in emergency medicine and
9 what type of certifications have you earned?

10 A I graduated in high school in 1990 and then I
11 went to college for two years, graduated from college with
12 an associate's degree in emergency medicine and took my
13 paramedic examine at that time and then I been at
14 Greenville County ever since then working as a paramedic.

15 Q Is there a difference between the term EMT and
16 paramedic?

17 A Yes, in the State of South Carolina we're
18 regulated by DHEC and there are three certifications, the
19 highest a paramedic and the middle an advance EMT and on
20 the bottom level is EMT.

21 Q And you are paramedic?

22 A Yes, ma'am.

23 Q Were you shift commander for this incident in
24 this trial on March 4th?

25 A Yes, ma'am.

James Jones - Direct

1 Q I'm going to show you State's 26, 27 and 28, the
2 exhibits that Ms. Clark was talking about and ask you if
3 you are familiar with these documents and if you recognize
4 what they are?

5 A Yes, I am familiar with the and I do recognize
6 that they're all patient care reports.

7 Q And have you over the years been involved with
8 producing patient reports?

9 A Yes, ma'am.

10 Q Can you tell me what the purpose of these reports
11 is and who is responsible for generating them?

12 A Well, the purpose of the report is to document a
13 patient encounter. Obviously it documents where ever that
14 scene is, the position of where the patient was, their
15 pain, some demographics about who that patient is, a
16 physical examine, in other words, what that paramedic
17 found whenever the assess them and whatever treatments
18 that were done.

19 Q Did they also assess the mechanism of injury?

20 A Yes.

21 Q In crash scenes?

22 A Yes.

23 Q Can you tell me what that means mechanism of
24 injury?

25 A It just means what happened and mechanism of

James Jones - Direct

1 injury pertains to trauma patients. Like if they fell,
2 how far did they fall, a 20 or 30 feet fall or a 10 feet
3 fall and that makes a big difference as far as how we may
4 treat them. It makes us kind of predict what injuries
5 they may or may not have.

6 Q Is that information conveyed to the doctors in
7 the ER when you transport the patient as well?

8 A Yes, ma'am.

9 Q Now, let's get back to how these reports are
10 generated. Is this a computer base system?

11 A Yes.

12 Q Are there mobile computer terminals in the
13 ambulances?

14 A There are.

15 Q And you have both EMT's and paramedics?

16 A Yes, we do.

17 Q Do they do entries on these at the scene?

18 A Yes, they do. Obviously when a patient is more
19 critical it's a team effort so a patient that's more
20 critical may require a more hands on approach by both
21 partners and there not be time to pick up a laptop
22 computer.

23 Q Is that information, none the less, entered into
24 the computer as soon as is possible to do so?

25 A Yes.

James Jones - Direct

1 Q Typically what is the time frame for completing
2 that process?

3 A For completing the report prior to the end of
4 their shift.

5 Q So that's within a matter of hours?

6 A Yes.

7 Q Anyone involved in any way with that patient
8 required to review that report and sign off of it?

9 A Yes. And you can call in and electronically
10 sign.

11 Q And this is all via the computer?

12 A That's correct.

13 Q So is it safe to say that everything in these
14 records was either real time or in very close proximity
15 after the events?

16 A Yes.

17 MS. DRAWDY: Your Honor, at this time we'd
18 like to move State's Exhibits 26, 27 and 28 into evidence.

19 THE COURT: Give them the opportunity to
20 review the same.

21 DEFENDANT MCCALL: I have no objection.

22 THE COURT: Without objection, they will be
23 introduced into evidence.

24 (Reports marked as State's Exhibit Nos 26, 27
25 and 28 for identification was admitted into evidence.)

James Jones - Direct

1 BY MS. DRAWDY:

2 Q Lieutenant James, do these reports include a time
3 that the call was received by EMS on them?

4 A Yes, they do.

5 Q What was that time and you can give me military
6 time?

7 A 17:45. Do you want the seconds as well, 44
8 seconds.

9 Q So that's when the call was received by EMS?

10 A Yes, ma'am.

11 Q And how many units were dispatched?

12 A From our department?

13 Q Yes.

14 A Three units.

15 Q And was one of those your units?

16 A Yes.

17 Q And is that actually listed on the report?

18 A No.

19 Q Why is that?

20 A My unit is what's called a quick response unit,
21 it's not an ambulance, and therefore, it doesn't have a
22 DHEC license. So we don't fill out reports, that's one
23 reason. The second reason is obviously we don't -- it's
24 not very sufficient when you have multiple reports for one
25 patient. So in a case like this when I arrived the things

James Jones - Direct

1 that I do are integrated into one report and I work
2 together with the team of providers to make that report.

3 Q Which EMS unit was the first to arrive on scene?

4 A Let's see. That would have been Medic 9.

5 Q What time did they arrive on scene?

6 A At 17:52 and 55 seconds.

7 Q So they're the first to arrive from EMS?

8 A That is correct.

9 Q And who were the techs on that vehicle?

10 A Paramedic Chris Stache and then paramedic Ron
11 Freeman but actually Ron was an intermediate EMT at that
12 time.

13 Q Is Chris Stache a paramedic?

14 A Yes, he is. At the time they were called
15 intermediates -- earlier when you ask me the questions of
16 explaining the levels the term has changed and it's now
17 called advanced.

18 Q Who was the second to arrive?

19 A It would have been me.

20 Q You don't know what time?

21 A No, it's not reflected on these records because I
22 don't do a patient care report. The time on these records
23 are the actual response.

24 Q So is this one reason why you document the time
25 so when you go back you know things?

James Jones - Direct

1 A That's correct.

2 Q Somewhere in here Lieutenant John James arrives?

3 A That would be reflected in our CAD.

4 Q You don't have that with you?

5 A No, I don't.

6 Q You know you arrived in between?

7 A That is correct.

8 Q When did the next EMS unit arrive?

9 A That was Medic 26 and they arrived.

10 Q 26 or MO26?

11 A M26. They arrived at 18:11, 33 seconds.

12 Q That's the second service EMS unit to arrive?

13 A Yes.

14 Q And are there also two medics in this unit and
15 who are they?

16 A This is the same exact crew configuration, one
17 was a paramedic and the other was a EMT. The paramedic
18 was Gary Clark and the intermediate was Josh Robinson.
19 Josh is now a paramedic.

20 Q Now, can you tell me from your reports what time
21 each of these units, the first to the scene and the second
22 to scene left with their patients?

23 A Medic 9 departed the scene at 18:40 and 48
24 seconds.

25 Q What time did Medic 26 leave?

James Jones - Direct

1 A They departed the scene at 18:29 and 48 seconds.

2 Q Who was the first to depart?

3 A Medic 26.

4 Q And what patient or patients did they have
5 on board, Medic 26, when they left?

6 A Was Julia Suddeth and Terry McCall.

7 Q So they were transported together?

8 A They were transported in the same ambulance, yes,
9 ma'am.

10 Q When Medic 9 departed at 18:40, who were they
11 carrying?

12 A Was carrying Robert Suddeth.

13 Q Now, we've been talking four digits for time, can
14 you tell us how to translate that to standard time that
15 most people use on a day to day basis?

16 A Yes, ma'am. How I explain it to their kids when
17 they ask me, you subtract 12 so 17 if you subtract 12 from
18 that it would be 5:45.

19 Q I'm not going to ask you to translate all of
20 them.

21 A Okay.

22 Q Let's talk a little bit about the types of things
23 that are in these reports, some of the forms that are in
24 Exhibit No. 28 and can you tell me whose patient care
25 report that was?

James Jones - Direct

1 A Exhibit 28 is the patient care report for
2 Mr. Terry McCall.

3 Q We haven't heard much about him until now. Can
4 you tell me if vital signs were taken and any testing that
5 was done at that time?

6 A When you refer to testing, what are you referring
7 to?

8 Q What are the typical measurements that you take
9 at a scene, what do you take?

10 A Blood pressure, pulse rate, respiratory rate,
11 pupil size, those types of things. Your vital signs.

12 Q Do you also take glucose levels?

13 A Yes, ma'am.

14 Q Can you look on your report if you took glucose
15 levels?

16 A Keep in mind I was not on this report but a crew.
17 Member did. They did check his blood pressure and they
18 did check his glucose that was done at 18:26 and it was --
19 do you want to know what was?

20 Q Yes, please.

21 A It was 93 milligrams per deciliter.

22 Q Is that glucose?

23 A Yes, ma'am.

24 Q And what was his blood pressure?

25 A His blood pressure -- there's several documented

James Jones - Direct

1 here. The first one was 130 by palpation.

2 Q Is that taken at 18:26?

3 A No, ma'am. Would you like the one that was taken
4 at 18:26?

5 Q Yes, ma'am. Was that the first one?

6 A No, that would be the second one that was
7 documented.

8 Q This is not a final report. I guess we'll do
9 this. When was the first one taken?

10 A The first blood pressure was taken at 18:12 and
11 that was 130 by palpation.

12 Q What do you mean by palpation?

13 A That's the first blood pressure. On an accident
14 scene, there's usually a lot of noise. I don't know how
15 familiar you are with taking a blood pressure but it
16 requires the use of a stethoscope. A lot of times there's
17 a lot of noise, fire engines and things like that and you
18 just can hear a blood pressure so we have a palpation.
19 That's when you use a blood pressure cup and you feel a
20 patient's pulse with your hand it only gives you one
21 number and a blood pressure reading. It has two numbers,
22 a top number and bottom number, systolic and diastolic.
23 With the palpation method you only get that top number so
24 the systolic reading was 130.

25 Q So the systolic and diastolic which was the first

James Jones - Direct

1 one of those two?

2 A That would be the same time.

3 Q 18:26?

4 A Yes.

5 Q What was that?

6 A 140 over 80.

7 Q You mentioned something about pupil dilations, is
8 that also recorded?

9 A The pupil size should be in this report, yes.

10 Q Is there a time for that or is that during the
11 course of treatment?

12 A During the course of the examine it doesn't have
13 a set time of what that was taken.

14 Q What was his pupil size?

15 A His pupil size was six millimeters on the left
16 and also documented six millimeters on the right.

17 Q Six millimeters in both eyes?

18 A That's correct.

19 Q Now, you don't know the specific time. Would
20 that have been done on the scene before they left or during
21 transport?

22 A It would either have been done on the scene or at
23 some point during transport. I can't really say for sure
24 which.

25 Q Okay. Now, let's move to something else.

James Jones - Direct

1 A Okay.

2 Q Let's talk about what you did at the scene. If
3 you would step down with me please. We have some exhibits
4 to show you. You can come with me here. I'm going to
5 give you a pointer. I want to show you a series of
6 exhibits and see if you can describe where were your
7 different units that we've been discussing were located.
8 These are State's Exhibits 3, 5, 11 and 10. Did you
9 review these photographs before trial today?

10 A Yes.

11 Q And did you recognize this as being photographs
12 of the scene?

13 A Yes, I do.

14 Q Are they a fair and accurate representation of
15 what you recall?

16 A Yes, they are.

17 Q If you could look through these photos and select
18 the one you can best use to explain to the jury, I know
19 that the vehicles involved in the crash may not be fully
20 or visible, but where they are in position to where your
21 EMS vehicles are. You can use several.

22 A I'll use those two.

23 Q If you could say which exhibits for the record.
24 Which one would you like to use first?

25 A This one.

James Jones - Direct

1 Q State's Exhibit 5, can you explain which EMS
2 units are shown in the photographs and where the vehicles
3 are in relation?

4 A Yes, I can. You see this is a red light right
5 here intersection, that would be the intersection of 291
6 and Worley Road and as you can see there's a Spinx station
7 right there so that's the sign that we're seeing right
8 here. This would be northbound on 291 headed towards
9 Cherrydale.

10 The vehicle you see here is my vehicle and
11 that's like I was telling you earlier on, I drive a quick
12 response vehicle and it doesn't transport patients. This
13 vehicle here would be Medic 26 which is the second vehicle
14 to arrive. And then you can see it better in the photo
15 but right there on that edge you can see one of the
16 vehicle involved in the crash and I believe that's the
17 green Ford Explorer.

18 Q Do you need the next photo?

19 A Yes.

20 Q Next is State's Exhibit 10.

21 A Just so you can get a perspective of this photo,
22 the last photo would have been taken when you were
23 standing about right here where this dot is facing
24 backward. This vehicle here is my vehicle and you're
25 seeing the front of it. This lane right here would be

James Jones - Direct

1 southbound 291. The intersection of Worley Road would be
2 back towards us. This vehicle here would be Medic 26.
3 You see this the other vehicle involved which would be the
4 burgundy pick up.

5 Q Who was in that vehicle?

6 A Mr. Suddeth and his daughter and Mr. McCall was
7 like in a green small SUV. It would be positioned more
8 right here in this photo, and then the first arriving
9 transport unit, you can't really see it in this picture
10 but it is parked about right in here.

11 Q Can you see it in the previous exhibit?

12 A No.

13 Q Now, when you arrived, where did you go first or
14 what did you do, who did you assist?

15 A When I arrived on the scene Medic 9 was already
16 on the scene, and EMT or paramedic Ryan Freeman, he had
17 assumed command of the incident which means he was in
18 charge of sizing up the incident. So when I get there, my
19 job is to find whoever is in command, get a report from
20 the as to what's going on on scene, so that's what I did.
21 Ryan told me that he had two patients that were here, one
22 was entrapped and then in the other vehicle, he said that
23 patient was awake and was a priority 2.

24 From that point I assumed command of the
25 incident and to assist with the care of Mr. Suddeth who

James Jones - Direct

1 was in his pick up truck.

2 Q And based on the context of what you see
3 happening there, at the time this photograph was taken,
4 was Mr. Suddeth still in the vehicle?

5 A Yes, he was still in the vehicle. The reason I
6 know that is because the stretcher is right here and he
7 was not in the stretcher. He was so entrapped in the
8 vehicle that the initial responders from the fire
9 department did not know how to get him out. I had to have
10 some conversation with them.

11 Q Do you have a background in that?

12 A In what?

13 Q Extrication?

14 A Yes, ma'am, I do. Greenville County used to
15 perform extrication service for Greenville County. We
16 stopped doing that a couple of years before this accident
17 happened the fire department was in a transition for
18 taking over. So, yes, I worked as a rescue tech for two
19 years as part of career.

20 One of the ways of removing him as we
21 discussed was flattening or removing the roof and as you
22 can see here what they've done is they cut the a and the b
23 post back here and then cut on the center and this
24 firefighter is lifting it up. It's like taking the roof
25 off of the can.

James Jones - Direct

1 Mr. Suddeth is still in this vehicle right
2 here. After this roof was flat, he was removed out the
3 driver's seat and taken to the bed of the pick up and put
4 on a spine board and at that point he was moved to the
5 stretcher.

6 Q I'm going to show you 11 and ask if this shows
7 what was happening after the roof was removed?

8 A As you see here the roof has been kind of flat
9 all the way over and the headliner is facing towards the
10 sky now. That's actually me standing right there at the
11 pick up.

12 Q This is the moment he was being pulled out?

13 A That's correct.

14 Q Please answer any questions that the defendant
15 might have.

16 THE COURT: Any cross?

17 DEFENDANT MCCALL: No questions.

18 MS. DRAWDY: Can he be released?

19 THE COURT: Sure.

20 THE CLERK: Please come up to be sworn in,
21 place your left hand on the Bible and raise your right.

22 RYAN FREEMAN, having been duly sworn,
23 testified as follows:

24 Thank you. State your name for the record.

25 THE WITNESS: Paramedic Ryan Freeman.

Ryan Freeman - Direct

1 THE CLERK: Thank you.

2 DIRECT EXAMINATION

3 BY MS. DRAWDY:

4 Q For the purposes of your testimony I'm going to
5 give you a copy of the patient record which is Exhibit 26.
6 First before I ask you questions, are you a paramedic?

7 A Yes, ma'am, I am.

8 Q EMS?

9 A Yes, ma'am.

10 Q At the time of this incident, what unit were you
11 attached to?

12 A I was on Medic 9.

13 Q Were you driving?

14 A Yes, to the hospital. As far as to the scene, I
15 believe I did.

16 Q Is that something you alter with your partner?

17 A Yes, depends on what's required at the time.

18 Q Can you tell me what you did when you first drove
19 up to the scene?

20 A Yes, ma'am, I was working with paramedic Chris
21 Stache and we were one of the first to arrive. Our
22 objective at that point is to identify patients, figure
23 out who is involved and who is hurt and start the triage
24 process and then we begin to work on the worse patient and
25 then stair step down.

Ryan Freeman - Direct

1 When we showed up we actually split. I went
2 to the green SUV and identified the patient there, and my
3 partner had gone to the pick up truck.

4 Q Please step down and ask you to look at State's
5 Exhibit 13, 14 and 15 and ask you if you would look at
6 those photographs. Were you given an opportunity to see
7 these before today?

8 A Yes, ma'am.

9 Q And do you recognize what's pictured in those
10 photographs?

11 A Yes.

12 Q What is that?

13 A This is the green SUV.

14 Q Are these fair and accurate representations of
15 the way that appeared during the course of this incident?

16 A Yes, ma'am.

17 Q Which side of the vehicle was presented to you
18 did you see first that you approached?

19 A When we drove up, I would be facing the driver's
20 side of the vehicle.

21 Q The driver's side?

22 A Yes, I would parked here.

23 Q Is it your unit that's portrayed in Exhibit 16?

24 A Yes, that was our unit.

25 Q This is your unit?

Ryan Freeman - Direct

1 A Yes.

2 Q In the foreground is the green Ford Explorer?

3 A Yes, ma'am.

4 Q And did you approach that vehicle?

5 A Yes, ma'am, I did.

6 Q And check on the occupant?

7 A Yes, ma'am.

8 Q How many occupants did you find?

9 A One.

10 Q And can you give an appearance of the occupant
11 you found, white, black, male, female?

12 A Yes, ma'am, it was a white male, middle aged.
13 That was all I gathered at that point. We were concerned
14 about injuries versus physical characteristics.

15 Q He was the only occupant?

16 A Yes.

17 Q Where was he seated?

18 A He was in the driver's seat.

19 Q Did you speak to him?

20 A Yes.

21 Q What was your purpose in speaking to him?

22 A To identify that he was alert and has the mental
23 status at that point to know that I'm speaking to him;
24 that he's not unconscious, not altered, to establish the
25 extend of his injuries.

Ryan Freeman - Direct

1 Q So this is your first viewing the scene to
2 determine who is injured worse?

3 A Yes.

4 Q How are his injuries compared with the person in
5 the other vehicle?

6 A I did not see any severe or life threatening
7 injuries at that point when I first walked up to him. So
8 at that point we just identified him as a patient and the
9 fact that he's wake and speaking.

10 Q Was he able to get up at this time?

11 A I don't believe so. I believe that the dash
12 might have been sitting on his knees. That did prevent
13 him from moving, but we always instruct everybody to stay
14 seated.

15 Q Was the door also stuck?

16 A I remember pulling on the door and it wasn't
17 necessarily wedged into the damage but it wasn't able to
18 move freely.

19 Q I'm going to show you photograph Exhibit 15 and
20 ask you if this shows how the vehicle looked after the
21 door was popped open?

22 A Yes, ma'am.

23 Q Also 13, is this a slightly different view of the
24 scene?

25 A Yes, ma'am. That would be the same

Ryan Freeman - Direct

1 representation of the vehicle, rear of the vehicle.

2 Q How long were you at the green SUV before you
3 went back to help?

4 A A short period of time, just long enough to get
5 the basic information that I needed to prioritize him.

6 Q Did you go back and assist with the care of
7 Robert Suddeth?

8 A Once John James arrived at that point it was me
9 and my partner Chris Stache I actually step out of my role
10 and get additional resources as needed. So I would have
11 to call for additional ambulances of multiple patients,
12 but once John James arrived, at that point I would assist
13 with the most critical patient.

14 Q And do you recall if the coroner was called to
15 the scene?

16 A Yes, he was.

17 Q Is that something that the EMS does?

18 A Yes, ma'am, that was a routine practice with
19 anybody -- obviously if we had a death at the scene, but
20 in this case with Mr. Suddeth's injuries being fairly life
21 threatening and there was a question whether he was going
22 to live through the scene, we called the coroner so they
23 can do a first report of incident to gather information.
24 If he were to become deceased, they would have the
25 information to proceed with that case.

Ryan Freeman - Cross

1 Q And would you please refer to the report that I
2 gave you, State's Exhibit 26, and is this the report from
3 Medic 9 crew?

4 A Yes, it is.

5 Q Would you turn to the electronic signature page.
6 Did you sign off on this report after reviewing it?

7 A Yes, ma'am, I did.

8 Q What date and time did you do that?

9 A Let's see I signed the 4th at 21:50.

10 Q Please answer any questions the defense might
11 have.

12 CROSS-EXAMINATION

13 BY DEFENDANT MCCALL:

14 Q I'd like to ask you when you came on the scene
15 and approached the green Explorer, your observations were
16 you didn't see any kind of influence or impairment at that
17 time, is that correct?

18 A That's hard to answer due to the fact that we
19 only answer very basic questions. Something like would be
20 found if I asked more detailed questions like time, place,
21 date and that nature. I would actually have a
22 conversation with the patient. My basic question at that
23 point is just free to even notice that I'm there.

24 Q So your answer is no, is that correct?

25 A If you're asking if I noticed any physical

Ryan Freeman - Cross

1 impairments, the answer would be no just due to the brief
2 exchange.

3 DEFENDANT MCCALL: No more questions.

4 MS. DRAWDY: No redirect.

5 We'd ask that this witness be excused.

6 THE COURT: Certainly, have a great day.

7

8 (AT WHICH TIME THE TESTIMONY OF CHRIS STACH,

9 TERESA DAVIS DEWEISE AND JOSH ROBINSON CAN NOT BE

10 TRANSCRIBED.)

11

12 MR. ERWIN: Sorry, Your Honor.

13 THE COURT: It's okay. Are we ready for the
14 jury?

15 MR. OVERBY: Yes, sir.

16 MR. ERWIN: Yes, sir.

17 THE COURT: Bring them in please.

18 (Jury enters the courtroom)

19 THE COURT: Good morning, ladies and
20 gentlemen, welcome back. Alright, you may call your next
21 witness.

22 MR. OVERBY: If it please the Court, Your
23 Honor. At this time the state calls Sergeant Wes Hiatt.

24 THE CLERK: Sergeant Hiatt, would you come to
25 the stand, place your left hand on the Bible and raise

Wes Hiatt - Direct

1 your right.

2 WES HIATT, having been duly sworn, testified
3 as follows:

4 Would you please state your name for the
5 record, please.

6 THE WITNESS: Sergeant Wes Hiatt.

7 THE CLERK: Thank you.

8 DIRECT EXAMINATION

9 BY MR. OVERBY:

10 Q Sergeant Hiatt, how are you today?

11 A Just fine.

12 Q Where are you employed, sir?

13 A South Carolina Highway Patrol, Greenville County.

14 Q And how long have you been working for the South
15 Carolina Highway Patrol, Greenville County?

16 A About 24 and a half years.

17 Q What is your present rank and status?

18 A I'm a sergeant in Greenville County, supervisor.

19 Q What are some of your responsibilities?

20 A I got an array of responsibilities. I do
21 administrative work in the office, paperwork, oversee two
22 teams that work underneath me. When those team
23 supervisors are out I over see their times and that could
24 be supervising an accident scene, major events that go on
25 during that shift.

Wes Hiatt - Direct

1 Q Do you have any responsibilities with regard to
2 the collection of evidence in the case?

3 A I am the evidence custodian for Greenville County
4 and Upstate Main.

5 Q So you have to wear a lot of hats?

6 A That's correct.

7 Q Were you in this role on the night of March 4,
8 2012?

9 A Yes, I was.

10 Q Discuss how you came to be involved in this case?

11 A Got a call from dispatch stating they had a very
12 serious accident on SC 291 near Worley Road where they had
13 two vehicles involved possibly head-on with entrapment.

14 Q What is entrapment?

15 A Somebody is trapped in the vehicle and they have
16 to extricate them.

17 Q What did you do in response to that?

18 A I was at the office with -- our office is not
19 that far from that location. I responded to the scene.

20 Q What do you do when you respond to the scene as a
21 supervisor?

22 A I surveyed the scene first to see what you got to
23 try to figure out where you're drivers were at. Where the
24 vehicles were traveling. Also you want to secure the
25 scene to make sure you preserve any evidence. You also

Wes Hiatt - Direct

1 want to make sure this scene is safe. You also want to
2 get the number of personnel there to help you investigate
3 the accident and also help direct traffic to make the
4 scene safe.

5 Q How many troopers were there at the scene to help
6 you do that?

7 A I think I had nine.

8 Q Now, when you arrived, what was it that you
9 perceived at the scene?

10 A There were two vehicles there but heavy damage to
11 both vehicles. I think the fire department EMS was
12 already there when I got there. There was an Explorer
13 there and the driver was still in that vehicle. And then
14 the pick up truck. The driver was severely entrapped in
15 that vehicle. I was told there was another passenger in
16 the pick up truck and she was ambulatory and she was not
17 in the truck.

18 Q You said that you saw the driver in the Ford
19 Explorer vehicle?

20 A That's correct.

21 Q What was he doing at that time?

22 A He was just sitting in his car. He was entrapped
23 and I was told it would be a simple door pop to get him
24 out. A door pop was just when they use a crow bar or the
25 jaws of life, they just take it too there and just pop the

Wes Hiatt - Direct

1 door open.

2 Q Do you remember about what time you got to the
3 scene?

4 A I don't. It didn't take five minutes to get
5 there about. I don't remember what time it was.

6 Q Is a CAD report conducted in each of one of these
7 pages?

8 A It is.

9 Q Would it tell you what time?

10 A It should.

11 Q If it showed it to you, would it refresh your
12 recollection?

13 A Sometimes you can get there before and see the
14 scene and get out and not tell them you're there and
15 they'll hear you on the radio and put you out and know
16 you're there, so I could have got there.

17 Q I'd like to just show you this CAD report. Does
18 it give you a better idea of what time you got there?

19 A Around 18:03, which is 6:03.

20 Q Were you the first person from highway patrol on
21 the scene?

22 A I was.

23 Q And at that time he was still entrapped in his
24 automobile?

25 A That's correct.

Wes Hiatt - Direct

1 Q Now, what did you do after that in terms of your
2 scene investigation?

3 A Well, I knew I wasn't going to be involved in the
4 extraction so I started looking at the scene, making some
5 calls, just getting the ball rolling just getting the
6 investigation started.

7 Q And during this time, did the defendant in the
8 case ever get removed from the vehicle?

9 A He did.

10 Q Once that occurred, did you have an opportunity
11 to take a look at his car?

12 A The next time I saw his vehicle, he was not in
13 it. I did not see him. He had already been placed in the
14 ambulance. I took a quick look in his vehicle and I
15 noticed numerous empty beer cans in the vehicle.

16 Q If you wouldn't mind, sir, I'd like you to step
17 down. Sergeant, I'm going to show you State's Exhibit 21.
18 Do you recognize that?

19 A That's the inside of the Explorer.

20 Q That's what it looked like with all the stuff
21 around it, correct?

22 A That's correct.

23 Q I'm going to show you State's Exhibit No. 3. Do
24 you recognize that?

25 A I do.

Wes Hiatt - Direct

1 Q That's what you saw from your angle?

2 A That's correct.

3 Q You can step back up there. Once you saw those
4 beer cans, what did you do?

5 A Well, seeing the empty beer cans in the car led
6 me to believe that the driver might be drinking alcohol,
7 might be under the influence of alcohol. After that I saw
8 Trooper McAlhaney and I said there was some beer cans in
9 the car, I said he may be under the influence of alcohol,
10 get in the back of the ambulance and talk to him.

11 Q By this point, he's already in the ambulance?

12 A That's correct.

13 Q Did you go to the back of the ambulance?

14 A I went in the back of the ambulance and closed
15 the door so we could hear.

16 Q Did you talk to him?

17 A Yes.

18 Q What did you hear?

19 A I asked him what happened. He told me his brakes
20 went out on his vehicle. I asked him if he had been
21 drinking any alcohol and he said no. I said well there's
22 a bunch of beer cans in your car and he told he had
23 collected those beer cans just to sell them, to recycle,
24 and as I was talking to him, he wouldn't look at me. And
25 I said you need to look at me when I talk to you. That's

Wes Hiatt - Direct

1 when he opened his eyes real wide and that's when I
2 noticed his eyes were glassy and his pupils were dilated.

3 Q You said that you told him there were beer cans
4 in the car, did you smell an odor?

5 A I did not smell any alcohol.

6 Q What did you do after that happened?

7 A After that I got out of the ambulance and I told
8 Trooper McAlhaney I didn't smell any alcohol. I don't
9 think he's been drinking but he's on some kind of drug.

10 Q And from that point forward, what kind of
11 responsibility you had with the accident scene?

12 A I had at that point when I knew I probably some
13 type of drug involvement maybe driving under the influence
14 charge or a serious injury, we had to go ahead and notify
15 the lieutenant that was on call to get me involved because
16 they investigate all the serious accidents involving
17 alcohol, making sure all of my other troopers were in
18 place, making sure McAlhaney was getting his witness
19 statements, pictures taken, vehicles marked, investigating
20 the scene properly.

21 Q How long were you out there at the scene total?

22 A I don't know exactly. I know I had Trooper
23 McAlhaney at the office to process the evidence once he
24 got back from the hospital.

25 Q How long was that?

Wes Hiatt - Cross

1 A Three or four hours.

2 Q Okay. So you returned back to the office then?

3 A I did.

4 MR. OVERBY: Your Honor, at this time that's
5 all the questions the State has for Trooper Hiatt. The
6 State will be recalling him at a later time as to another
7 issue with regards to chain of custody.

8 THE COURT: Good enough. Questions.

9 MR. ERWIN: Yes.

10 CROSS-EXAMINATION

11 BY MR. ERWIN:

12 Q Trooper Hiatt, good afternoon.

13 A Good afternoon.

14 Q As far as investigating this, you are pretty much
15 a senior member of the time?

16 A That's correct.

17 Q You're in charge of a lot of this operation?

18 A That's correct.

19 Q Having that position, you are pretty much aware
20 of the investigation that went on in this case, right?

21 A That's correct.

22 Q Obviously you had to get ready to testify today
23 so you met with prosecutors and everything.

24 A That's correct.

25 Q So you'd say you have a pretty good handle on

Wes Hiatt - Cross

1 everything that went down in this case, right?

2 A Yes.

3 Q And you're very experienced law enforcement so
4 you know how these things go, right?

5 A Yes.

6 Q It's no surprise to you that there was no alcohol
7 in his system, right?

8 A Well, it did surprise me being the cans in me
9 that I saw but once you get in that ambulance you can tell
10 if somebody had been drinking, so I could tell he hadn't
11 been drinking.

12 Q So it was obvious to you then that he had not had
13 been drinking and the cans just happened to be there,
14 correct?

15 A That's correct.

16 Q When you were testifying earlier, you thought he
17 had some kind of drug in his system, right?

18 A That's correct.

19 Q Just to be clear, you're basing that off of your
20 observations, right? You're basing that off of his
21 behavior?

22 A I'm basing that on past experience and what I've
23 seen people on drugs.

24 Q But based on the investigation on the scene,
25 you're just using your eyes, right?

Wes Hiatt - Cross

1 A Right.

2 Q You're basing that on the way he was acting and
3 you said earlier his eyes being glassy and dilated and you
4 thought he was acting kind of goofy, right?

5 A And going from being drowsy to when I told him to
6 look at me and his eyes going wide open and kind of wide-
7 eyed.

8 Q This is going to sound silly, but it's not like
9 you have some sort of instant drug tests or something like
10 that? This is just based on what you can see, right?

11 A No, I don't have an instant drug test.

12 Q So just observation.

13 A That and he went on the wrong side of the road
14 and had a car wreck.

15 Q So what we're talking about then is basically the
16 accident itself and the way he was acting afterwards,
17 right?

18 A Right.

19 MR. ERWIN: I have no further questions.

20 MR. OVERBY: I have no further questions at
21 this time subject to what I said earlier.

22 THE COURT: Okay.

23 MS. DRAWDY: The State calls former Trooper
24 David McAlhaney.

25 THE CLERK: Please come forward to be sworn.

David MacAlhaney - Direct

1 Place your left hand on the Bible and raise your right.

2 DAVID MCALHANEY, having been duly sworn,
3 testified as follows:

4 Thank you. You may be seated. Please state
5 your name for the record.

6 THE WITNESS: David McAlhaney.

7 DIRECT EXAMINATION

8 BY MS. DRAWDY:

9 Q Mr. McAlhaney, some time has passed since this
10 happened; is that correct?

11 A That is true.

12 Q And in the interim, have you had the fortune of
13 retiring?

14 A I have retired actually December of that same
15 year.

16 Q Were you the primary investigator on this case?

17 A I was.

18 Q And how did that happen?

19 A Dispatched informed me of the accident on 291
20 North.

21 Q Was Sergeant Hiatt responsible for assigning it
22 to you?

23 A He probably was, probably was.

24 Q Tell me at that time, how long were you with the
25 patrol?

David MacAlhaney - Direct

1 A At that time I would have been in y 24th year.

2 Q I'm going to roll the time clock back and ask you
3 to tell me about some of the training that you received in
4 order to become a highway patrolmen. I just want to know
5 the type of training you received in accident
6 investigation, DUI investigation and that sort of thing.

7 A I received that when I started the highway parol
8 in 1986 and numerous times every year in service training
9 that reiterated. You go for refresher accident
10 investigation course. You constantly new things come out,
11 you're enlightened on those new things, DUIs, just
12 anything and everything that goes with paroling the
13 highways.

14 Q At the conclusion of your investigation, did you
15 write a brief report?

16 A I did.

17 Q Have you had an opportunity to review that in
18 preparation for your testimony today?

19 A I did.

20 Q Do you have those records?

21 A I do.

22 Q Did you have an opportunity to review photographs
23 that were taken at the scene?

24 A I was.

25 Q Did that refresh your memory?

David MacAlhaney - Direct

1 A It did.

2 Q We'll be showing you some of those to see if that
3 squares with your memory. Now, can you tell me
4 approximately what time you arrived on the scene? And do
5 you have a report that helps you?

6 A I have a CAD report here. Approximately I
7 arrived on there I believe it's 18:12.

8 Q Describe what you found at the scene?

9 A I found numerous emergency vehicles there, patrol
10 vehicles there. I parked behind one of the ambulances and
11 when I got out of the vehicle, I noticed then the
12 Chevrolet truck on the southbound truck of 291 with major
13 damage to it, and then I noticed the Ford Explorer on the
14 northbound with damage to it as well.

15 Q Did you check on the condition of the occupants
16 of the vehicles with EMS?

17 A I did. Of course, the truck -- at that moment I
18 couldn't find anything about the driver of the truck.
19 They were too busy trying to excavate him out of the
20 truck. I was on my way to talk to Mr. McCall and EMS had
21 already started their procedures with him as well. The
22 only thing I could really do was identify my drivers and I
23 knew exactly where they were.

24 Q Did you also have a conversation with Sergeant
25 Hiatt about what he observed?

David MacAlhaney - Direct

1 A I did. As he just testified, he was able to go
2 inside the ambulance and talk to Mr. McCall and when he
3 came out that's when he informed me that beer cans that
4 were in the vehicle. He picked them up. He didn't smell
5 any alcohol on him but there had to be something else and
6 he did mention there could be drugs.

7 Q Let's talk about what you did at the scene in the
8 way of investigating.

9 A I had to locate witnesses, find anybody that was
10 there, anybody that saw the accident.

11 Q Were you able to find any witness?

12 A I found two of them. After I found them, I went
13 back to my car and got the witnesses statements and gave
14 it to both of them and asked them to start writing out in
15 detail what they saw.

16 Q Did you also look at the evidence in the roadway
17 and the position of the vehicles?

18 A I did. It was obvious to me just from what I
19 could see as far as fault was concerned it was on the
20 Explorer because it had crossed the median and hit the
21 Chevrolet truck and it was almost side swiped head on.

22 Q Did you interviews with the witnesses conflict
23 with that or confirm it?

24 A They confirmed it. They actually told me that
25 the way they saw it happened the Ford Explorer for no

David MacAlhaney - Direct

1 reason that they could see just darted across the median
2 and hit the truck.

3 Q Approximately -- how long did it take you roughly
4 to finish your duties at the scene?

5 A Close to two hours.

6 Q And did you then go to the hospital to check out
7 Mr. McCall?

8 A I did. When I left the scene I arrived at the
9 hospital went into the emergency incident, told the nurse
10 up front who my victims were, names that were involved in
11 the accident and she directed me where to go. Mr. Suddeth
12 was in the trauma unit and Mr. McCall was in critical
13 care.

14 Q Were you able to speak with Mr. Suddeth?

15 A No, I was not. He was in no position to talk.

16 Q Did you direct your attention to Mr. McCall?

17 A I did.

18 Q Where you find him?

19 A He was laid out on a stretcher in the hallway.
20 Critical care is a long hallway with rooms all down the
21 side and he was in the hallway outside of the emergency
22 room.

23 Q Did you have a conversation with him?

24 A I did.

25 Q What was the content of that conversation?

David MacAlhaney - Direct

1 A I first asked him what happened? What caused
2 this accident, and he told me he did not have any calibers
3 on the wheel of his vehicle and the caliber is what holds
4 the brake pad in place. So with no calibers he had no
5 brakes at all on the car. He told me he knew there was no
6 brakes on the car and he also advised me that the car -- I
7 don't know, there was a conflict in my mind as to whose
8 car it was and where he got it. He said he knew it didn't
9 have any brakes and I then asked him if he had anything to
10 drink. And he replied no he didn't drink, he didn't have
11 any alcohol. I couldn't smell anything myself. There was
12 nothing of an alcoholic nature about it.

13 Q What did you notice about it, though?

14 A I knew something wasn't right because of his
15 reaction to my questions. The way he reacted his eyes was
16 kind of a sleepy type of mode and I would have to try to
17 say something. I would ask him a question and then he
18 would open his eyes real wide and answer and reply to it.
19 I'd ask him then if he had taken any drugs of any sort.
20 And he advised me he had taken prescription medication.

21 Q And he just said prescription medications?

22 A Yes, ma'am.

23 Q I'm going to show you State's Exhibit I and ask
24 you to look at that photograph. Whose portrayed in that
25 photograph?

David MacAlhaney - Direct

1 A Mr. McCall.

2 Q Does that photograph fairly and accurately depict
3 how he looked that day in the ER?

4 A Yes, it does.

5 MS. DRAWDY: We'd like to move this into
6 evidence as State's Exhibit I.

7 THE COURT: Any objection?

8 DEFENDANT MCCALL: No objection.

9 THE COURT: Introduced into evidence with no
10 objection.

11 (Photograph marked as State's Exhibit I for
12 identification was admitted into evidence.)

13 BY MS. DRAWDY:

14 Q Now, based on your observations of Mr. McCall,
15 did you make a decision at that point whether or not you
16 were going to levy any criminal charges?

17 A At that point based on all the evidence that I
18 saw, everything that I saw at the scene, everything that I
19 heard from the witness, based on him telling me that he
20 drove a vehicle knowing there were no brakes on it, his
21 reactions to my questions, it just didn't add up to me as
22 a person who was sitting there with no faults, so yes, I
23 did. I determined then that I was going to charge him
24 with felony driving under the influence due to the great
25 bodily injury.

David MacAlhaney - Direct

1 Q And as part of a felony driving under the
2 influence investigation either prior to arrest or follow
3 up, what are you trained to do about collecting more
4 evidence?

5 A Well, what you're supposed to do is in a felony
6 case, you have to lead a felony DUI advisement.

7 Q I'm going to show you State's Exhibit D and ask
8 you if you recognize what that is?

9 A I do, it's the advisement of implied consent for
10 felony DUI.

11 Q Is it a copy of the one that you read to Mr
12 McCall that night?

13 A Yes, it is.

14 Q Would you read that for the jury and did you
15 explain it to him?

16 A I explained it to him and I read it word for word
17 the advisement and asked him if he understood it.

18 Q Please read that to now.

19 A "You are under arrest for felony driving under
20 the influence, Section 56.5.3945 of South Carolina Code of
21 Laws 1976 as amended, or a law enforcement officer has
22 probable cause to believe that you have violated this
23 section. The officer has directed that samples be taken
24 for alcohol and or drug testing. The samples will be
25 taken and tested according to Section 56.5.2950 of SLED

David MacAlhaney - Direct

1 policies. Pursuant to Section 56.5.2946 you must submit
2 to either one or combination of chemical test for the
3 purposes of determining the presence of alcohol, drugs, or
4 a combination of alcohol and drugs. The resistance,
5 obstruction, or opposition to testing pursuant to Section
6 56.5.2946 is evidence admissible at trial. If your test
7 or samples have an alcohol concentrate of 15th 100th of 1
8 percent or more your privilege to drive in the State of
9 South Carolina must be suspended for a period of one
10 month. You have the right to have a qualified person of
11 your own choosing to conduct any additional independent
12 tests which are at your expense and the officer, upon
13 request, must provide you affirmative assistance. You
14 have the right to request an administrative hearing within
15 30 days of the issuance of the notice of suspension. If
16 you do not request an administrative hearing or if your
17 suspension is upheld in an administrative hearing, you
18 must enroll in an alcohol and drug safety action program."

19 Q After you read that, did you provide him with a
20 copy?

21 A I did.

22 Q Did you ask him to sign acknowledging receipt?

23 A These copies are all together and after I read it
24 to him I asked him to sign for a copy of this and since he
25 was laying down on the stretcher, I held it above his head

David MacAlhaney - Direct

1 and he said he would sign it. So I held it above his head
2 and I told him where to sign and he signed his name.

3 Q Now, I assume later that evening -- did you leave
4 him at the hospital or was he treated and released
5 eventually?

6 A He was treated and released.

7 Q And where did you take him after that?

8 A After that I took him to the Greenville County
9 Law Enforcement Center where I booked him in.

10 Q Was this also left at the Law Enforcement Center
11 in his property, his copy?

12 A It was.

13 Q I turn your attention to -- after you read that
14 and he agreed, what did you do?

15 A After I read it to him and he agreed I went and
16 found a nurse and told her that I had a subject that was
17 willing to voluntarily give me a blood sample and I read
18 him his implied consent and he agreed.

19 Q Is there another form that you use for felony
20 DUI's of if you're collecting a blood sample that your
21 agency provides to you?

22 A Yes, it is.

23 Q I want to show you State's Exhibit C and ask you
24 if that is the other form?

25 A It is.

David MacAlhaney - Direct

1 Q What is that?

2 A It's a blood urine collection report where I have
3 to check off different portions of it that the subject is
4 under arrest and the subject has been advised which I did
5 check those. And then it has the nurse's name on here and
6 checked again that the is still under arrest for felony
7 DUI and it's got my signature at the bottom and there
8 again I had to ask Mr. McCall if he would sign it and he
9 said yes so I held it up for him again and he signed this
10 one as well.

11 Q Was a copy provided to him in his property when
12 he went to the jail later that night?

13 A Yes, it was.

14 Q And who was the nurse?

15 A Ashley Norman.

16 Q How do you know?

17 A Her name is on his form.

18 Q Do you also record a time of arrest on this form?

19 A I believe there is one on there. Time of arrest
20 in this case was 20:13.

21 Q You found the nurse?

22 A I did.

23 Q And did she actually take samples?

24 A She did take samples.

25 Q What types of samples?

David MacAlhaney - Direct

1 A She took blood sample and urine samples.

2 Q I'm going to show you State's -- were you present
3 when these samples were collected?

4 A I was.

5 Q I'm going to show you State's Exhibit A and ask
6 you if you can tell me what that is?

7 A This is a hospital form chain of custody.

8 Q Is your signature on that?

9 A It is.

10 Q Is this a highway patrol form or a hospital form?

11 A It's a hospital form.

12 Q Is it something the nurse filled out and started?

13 A Yes, it is.

14 Q Does the chain of custody show when the sample
15 was drawn?

16 A It does.

17 Q Does it also show -- what time was it drawn?

18 A At 20:45.

19 Q Is that the blood or the urine sample?

20 A This is going to be I think the blood sample.

21 Q Let me see.

22 A Alright. Okay, the first specimen was urine.

23 Q At 20:45?

24 A Yes. I see it down there.

25 Q And did you sign acknowledging receipt?

David MacAlhaney - Direct

1 A I did .

2 Q I'm going to show you State's Exhibit B and ask
3 you if that is the same type of document but for the blood
4 sample?

5 A It is, that's for the blood.

6 Q Were you present when that was drawn?

7 A I was.

8 Q And did the nurse turn that sample over to you
9 after she had labeled and properly capped it?

10 A I did and I signed for it.

11 Q How many viles of blood were drawn?

12 A Two.

13 Q Let me ask you about the container for the urine,
14 what did that look like?

15 A It was a jar with a screw cap.

16 Q Did she put those in something to give you to
17 take back?

18 A The blood was put into a like a little blue bio
19 hazard bag and the urine was placed also in a bag of its
20 own.

21 Q Give me that time for the blood draw.

22 A 21:05 for the blood.

23 Q Now, when you took these samples from the nurse
24 where did you go, what did you do?

25 A That's when I took Mr. McCall into custody and

David MacAlhaney - Direct

1 they released him. I believe I may have signed the
2 discharge papers when he was released and then we went to
3 the Greenville County Law Enforcement Center.

4 Q And did you take the blood and urine samples with
5 you?

6 A I did. I had them in my possession the whole
7 time.

8 Q Where did you put them in your car?

9 A When I opened the trunk to secure my car i have a
10 box in there and I placed the in the trunk of my car.

11 Q And then you -- after you finished up with
12 Mr. McCall, did you lock up your car when you went into
13 the jail?

14 A Yes, my car is always locked.

15 Q When you finished up there, then what did you do?

16 A After I left the jail. that's when I went
17 straight to the patrol office and took the blood and the
18 urine with me, met with Sergeant Hiatt and we put them
19 into evidence.

20 Q I'm going to show you State's Exhibit 33 and 32
21 and ask you if you recognize what's in those photographs?

22 A Yes, I do.

23 Q What is that?

24 A That's the two viles of blood and the container
25 of urine.

David MacAlhaney - Direct

1 Q Is that how they appeared when Ashley Norman put
2 them in the bag and gave them to you?

3 A Yes, they are.

4 MS. DRAWDY: These are already in evidence,
5 Your Honor.

6 BY MS. DRAWDY:

7 Q You went to the central office with the blood
8 sample and urine sample?

9 A I did.

10 Q And it was Trooper Hiatt when you went there?

11 A It was.

12 Q And he's your custodian?

13 A He is.

14 Q For what purpose did you go to the office?

15 A Because we have to put the blood samples and
16 urine samples into evidence. The blood has to be placed
17 in the refrigerator which we have at the office which is
18 locked. Sergeant Hiatt is the one with the key to it.

19 Q While you were there did Sergeant Hiatt put it in
20 an evidence bag?

21 A He did.

22 Q I want to show you State's -- I don't think this
23 has been marked yet.

24 MS. DRAWDY: 36 please.

25 (Evidence bag marked as State's Exhibit No.

David MacAlhaney - Direct

1 36 for identification and admitted into evidence.)

2 BY MS. DRAWDY:

3 Q I'm going to show you what's been marked as
4 State's 36 and ask you if that is one of the types of
5 evidence bags that you use?

6 A It is.

7 Q And were the samples placed inside of an evidence
8 bag like that?

9 A Yes.

10 Q And does that appear to have the information on
11 this case?

12 A It does.

13 Q Who wrote that on the back?

14 A That's going to be Sergeant Hiatt.

15 Q Before he took custody of it and placed it in the
16 refrigerator. Did you sign a chain of custody at that
17 time for these items?

18 A I did.

19 MS. DRAWDY: 37 please.

20 (Chain of custody marked as State's Exhibit
21 No. 37 for identification.)

22 BY SOLICIOR2:

23 Q I'm going to show you State's 37 and ask you if
24 this is a copy of the chain of custody that you signed or
25 initialed?

David MacAlhaney - Direct

1 A Yes, it is.

2 Q Where did you sign or initial?

3 A I signed when turning the evidence into the
4 refrigerator.

5 Q Did you put it in the refrigerator or Sergeant
6 Hiatt?

7 A Sergeant Hiatt put it in there.

8 Q After you finish that process, were your duties
9 in this case more or less concluded?

10 A Well, for that night they were concluded.

11 Q They been resurrected today.

12 MS. DRAWDY: May I approach?

13 THE COURT: Yes.

14 BY MS. DRAWDY:

15 Q We have been discussing State's Exhibit C a
16 little bit earlier which you said was a copy of the Urine
17 Blood collection form. Would you tell me what's stamped
18 at the bottom of this?

19 A It has Mr. McCall's name on it.

20 Q That's a record from the hospital, their copy of
21 the form?

22 A Yes.

23 Q After you finished up, you had other copies of
24 it; is that correct?

25 A That's correct.

David MacAlhaney - Direct

1 Q Did you fill in from the information add to this
2 information from the two hospital forms that showed the
3 time the samples were collected?

4 A I did.

5 Q And has that been added to the highway patrol
6 copy of it?

7 A Yes, it has.

8 Q Where is that?

9 A Right here.

10 Q It says?

11 A "Time of arrest."

12 Q What's after that?

13 A "Time of test."

14 Q And that's on the chain of custody sheets that
15 the nurse started?

16 A Yes.

17 Q And that's the only difference between those two?

18 A That's the only difference.

19 Q Is there a -- these forms that you use is it just
20 a sheet a paper or are they carbonless copies?

21 A Carbonless copies.

22 Q Is it more than one copy?

23 A Yes.

24 Q Are they designed to go different places?

25 A Different places.

David MacAlhaney - Cross

1 Q And can you tell me where are they designed to
2 go?

3 A This is the hospital copy.

4 Q Where are the three places that they are designed
5 to go?

6 A I get one, the subject gets one that you formed
7 the test on, and then the staff gets a copy.

8 Q And the hospital?

9 A And the hospital.

10 MS. DRAWDY: We'd like to move this in as
11 State's 29.

12 DEFENDANT MCCALL: No objection.

13 THE COURT: Without objection.

14 (Copy of test marked as State's Exhibit No.
15 29 and admitted into evidence.)

16 MS. DRAWDY: I have no further questions.

17 CROSS-EXAMINATION

18 BY MR. ERWIN:

19 Q I want to start out talking about the brakes for
20 a second. You charged Mr. McCall with felony DUI, right?

21 A Correct.

22 Q You did not charge him with reckless driving,
23 right?

24 A No, sir.

25 Q You didn't charge him with attempted murder?

David MacAlhaney - Cross

1 A No.

2 Q You charged him with driving under the influence?

3 A Correct.

4 Q You agree that he had not been drinking any
5 alcohol?

6 A I do.

7 Q You were talking about what Sergeant Hiatt told
8 you about the car, right, what he had seen and smelled
9 around there.,

10 A Right.

11 Q That he had not smelled any alcohol or anything
12 like that?

13 A That's correct.

14 Q Let's talk about what he had not seen or smelled.
15 He didn't tell you he had smelled marijuana, right?

16 A Right.

17 Q He didn't tell you he smelled crack cocaine or
18 anything like that, right?

19 A He didn't name a specific drug.

20 Q He didn't tell you that he saw paraphernalia or
21 anything like that?

22 A No.

23 Q He didn't tell you of any drugs he had seen being
24 used in that car, right?

25 A No.

David MacAlhaney - Cross

1 Q Your decision to charge with Mr. McCall with
2 driving under the influence, that came from your
3 observations when you interacted with him, right?

4 A My observations, interacting with him, and my 24
5 years of experience.

6 Q So you used your eyes and saw what you saw and
7 you put that together and made you help come to your
8 conclusion, right?

9 A Yes, sir.

10 Q And you had never met Mr. McCall before in your
11 life, have you?

12 A Right.

13 Q This is the only time you had ever interacted
14 with him was there in that hospital, right?

15 A Right.

16 Q And you said that he was acting strange, right?

17 A Different.

18 Q He was acting goofy, you said his eyes were
19 strange, right?

20 A True.

21 Q So that together with the circumstances of the
22 actual accident that you were aware of, right, those two
23 things together led to you charging him with DUI, correct?

24 A Correct.

25 MR. ERWIN: No further questions.

David MacAlhaney - Cross

1 MS. DRAWDY: I have no further questions of
2 this witness. May he be released so he can go back to his
3 retirement.

4 THE COURT: You are excused.

5 MS. DRAWDY: Your Honor, may we have a break
6 at this point.

7 THE COURT: Sure. Ladies and gentlemen,
8 we'll take a break for about five or ten minutes and then
9 resume testimony.

10 (Jury exits the courtroom.)

11 (Brief break.)

12 MS. DRAWDY: Your Honor, while we're still on
13 the record, it was brought to my attention that I
14 neglected to move in two exhibits and I would like to,
15 with the agreement of counsel, move in 32 and 33 into
16 evidence.

17 MR. ERWIN: We do not object to these
18 exhibits being moved in. Obviously we'll be objection
19 when the actual blood is move in but these pictures I do
20 not object to.

21 THE COURT: I understand and I recognize that
22 Mr. Erwin you're working with some deal of handicap just
23 coming into the case. I know there was an objection
24 initially in pretrial to the introduction of the blood
25 evidence and I denied that motion. As of this point,

David MacAlhaney - Cross

1 there's been no introduction of the blood evidence itself,
2 just the taking of it. You may make a contemporaneous
3 objection as to the introduction of the evidence and your
4 objection is protected for the record.

5 We ready for the jury?

6 MS. DRAWDY: Yes.

7 MR. ERWIN: Yes, Your Honor.

8 THE COURT: Bring them in, please.

9 (Jury re-enters the courtroom.)

10 You may call your next witness.

11 MS. DRAWDY: The State calls Ashley Norman.

12 THE CLERK: Please come up to the stand to be
13 sworn in and place your left hand on the Bible and raise
14 your right.

15 ASHLEY NORMAN, having been duly sworn,
16 testified as follows:

17 Thank you. You may be seated.

18 State your full name for the record.

19 THE WITNESS: Ashley Norman.

20 DIRECT EXAMINATION

21 BY MS. DRAWDY:

22 Q Ms. Norman, you're going to have to speak up a
23 little more than that.

24 A Sorry.

25 Q It's okay. Ms. Norman, what is your occupation?

David MacAlhaney - Cross

1 A I'm a nurse at Greenville Memorial the ER.

2 Q Are you a registered nurse?

3 A I am.

4 Q What state is your license?

5 A South Carolina.

6 Q What education did you receive and training to
7 become a registered nurse?

8 A I did get my associates degree in nursing and I
9 also passed the nursing board for the state of South
10 Carolina.

11 Q And how long have you been a nurse?

12 A A little over seven years.

13 Q Now, you say you were employed with Greenville
14 Hospital Systems.

15 A Yes, ma'am.

16 Q What part of the hospital do you work in?

17 A I work in emergency room.

18 Q All seven years?

19 A I have.

20 Q Were you working in the emergency room on March
21 4, 2012?

22 A I was.

23 Q Did you at some point have occasion to come in
24 contact with the defendant Terry McCall?

25 A I did.

David MacAlhaney - Cross

1 Q I'm going to hand you what's marked as State's E
2 and ask you if you recognize that document?

3 A I do.

4 Q What is that?

5 A This is a patient chart from the emergency room.

6 Q Whose chart is it?

7 A Terry McCall.

8 Q From what date?

9 A It was from March 4, 2012.

10 Q Did you have input into that chart?

11 A I did.

12 Q In what capacity?

13 A The blood and urine that were obtained from him,
14 I drew the blood and urine.

15 Q Were you assigned as his nurse?

16 A I was not.

17 Q How did you come to take a blood and urine sample
18 from him?

19 A I was asked by the state trooper if I could get
20 sample for him.

21 Q Have you been asked by other law enforcement to
22 get a sample in the ER?

23 A I have.

24 Q How many occasions would you say?

25 A Three, maybe four.

David MacAlhaney - Cross

1 Q When the trooper asked you take this sample from
2 Mr. McCall, did he have you sign a document?

3 A He did.

4 Q I'm going to show you State's C and do you
5 recognize your signature on that document?

6 A I do.

7 Q What does that signature indicate?

8 A Drawing the blood, something the officers asked
9 me for.

10 Q And what procedure did you follow in terms of
11 approaching the patient about drawing the blood?

12 A I approached the patient and introduced myself
13 and explained to him I was requested by the trooper to get
14 blood from him and it was mu understanding he was okay
15 with that and he was willing to do that and he agreed.

16 Q Was that the only type of sample that he took?

17 A He also gave us a urine sample.

18 Q I want to show you State's A and ask you if you
19 can identify that document?

20 A That's the hospital's chain of custody form.

21 Q Is that the same of company form that the urine
22 sample that you took from him?

23 A It is.

24 Q Who initiated the information on this?

25 A I did.

David MacAlhaney - Cross

1 Q What type of information did you write on this
2 form?

3 A Just the type of the test being performed, what
4 specimen we were using, how we would take it, that I
5 collected it and a description of the specimen.

6 Q How did you obtain this sample?

7 A Mr. McCall was given a sterile cup that we use to
8 collect urine and he gave us a voided specimen into that
9 cup.

10 Q And then what did you do with the specimen?

11 A Then it was labeled and then placed into a blue
12 biohazard bag.

13 Q And the cup?

14 A The cup was -- I'm sorry, the cup was sealed when
15 he gave it to me and then it was labeled and the cup was
16 then placed into the blue biohazard bag.

17 Q You say it was labeled, what type of label was
18 placed on it?

19 A All patients have identifying labels. We get a
20 sheet for each patient that has at least 20, 25 labels on
21 it and any time we collect, blood, urine, clothing, we put
22 a label on it that has identifying information, their
23 name, their birth date, their record number, the date that
24 they were admitted to the ER.

25 Q So you placed one of those labels on the jar?

David MacAlhaney - Cross

1 A I did.

2 Q Did you also collect a blood sample from
3 Mr. McCall?

4 A I did.

5 Q I'm going to show you State's Exhibit B and ask
6 you to identify that form.

7 A That's the same form as the urine but this is for
8 the blood.

9 Q What procedure did you follow when you collected
10 that sample?

11 A I again I introduced myself as before and used a
12 betadine(p) swab to clean the site, obtained a butterfly
13 needle to draw his drug into the two grey top viles.

14 Q So you took two viles of blood?

15 A I did.

16 Q A grey cap to you?

17 A Yes.

18 Q Why did you use a grey cap? I know that means
19 something to you but why did you use that?

20 A This is what is used to collect the blood alcohol
21 for legal purposes.

22 Q What did you do with the sample?

23 A The blood samples, I put labels on each tube with
24 my tech code and the urine I also put my tech code on
25 there to identify who drew it and the time it was drawn

David MacAlhaney - Cross

1 and put the labels on the urine and the blood.

2 Q Was the trooper there when did you all of this?

3 A He was.

4 Q After you labeled the samples and put them in the
5 blood bag, you filled out your part of the chain of
6 custody what did you do?

7 A We filled out the chain of custody, we signed the
8 samples and he took it from there.

9 Q Was he provided with a copy of this chain of
10 custody?

11 A He was.

12 Q I'm going to show you State's Exhibit 32 and 33
13 and ask you if you recognize what's pictured in these
14 photographs?

15 A I do.

16 Q What is pictured in those photographs?

17 A The urine sample cup and the viles that had blood
18 in them.

19 Q Did you have an opportunity to examine these
20 photographs before trial today?

21 A I did.

22 Q Did the fairly and accurately portray the
23 condition of those samples at the time that you gave them
24 to the trooper?

25 A They did.

David MacAlhaney - Cross

1 Q And they do not appear to have changed in any way
2 or been opened?

3 A They don't appear to be.

4 Q Please any questions that Mr. McCall or
5 co-counsel might have.

6 A Sure.

7 CROSS-EXAMINATION

8 BY MR. ERWIN:

9 Q You ever met Mr. McCall outside of the day he was
10 in this hospital?

11 A I have not.

12 Q So you don't know what he's like or anything like
13 that?

14 A I do not.

15 MR. ERWIN: I have no further questions.

16 THE COURT: Any redirect.

17 MS. DRAWDY: No redirect. May this witness
18 be excused?

19 THE COURT: Yes, ma'am.

20 Thank you for being here.

21 MS. DRAWDY: The State calls Sergeant Wes
22 Hiatt.

23 THE COURT: You remain under oath.

24 REDIRECT EXAMINATION

25 BY MS. DRAWDY:

David MacAlhaney - Redirect

1 Q Sergeant Hiatt, when you returned to the office
2 after working this wreck, did you at some point take in
3 the blood samples that Trooper McAlhaney got at the
4 hospital?

5 A The blood and urine sample.

6 Q I'm going to show you State's Exhibit 37 and ask
7 you if you recognize what that document is a copy of?

8 A It's a copy of our chain of custody that we use
9 for all evidence at the Department of Public Safety.

10 Q And is this the chain of custody associated with
11 this case?

12 A Yes, it is.

13 Q Who initiated this particular chain of custody?

14 A Trooper McAlhaney at the time.

15 Q Is that a form that you keep at the office?

16 A It's a computer generated form. It's a form we
17 keep on the computer.

18 Q What does it show whose sample it is?

19 A Terry Edward McCall.

20 Q What evidence did you take into custody?

21 A Two viles of blood and one plastic container of
22 urine.

23 Q When Trooper McAlhaney brought to samples to you,
24 what did they look like?

25 A They were in a blue biohazard bag from the

David MacAlhaney - Redirect

1 hospital and blood was in two viles, separate viles, and
2 urine was plastic container.

3 Q Did you place those materials into what's
4 referred to as an evidence bag?

5 A I actually filled out the bag in my handwriting
6 and we also have to go into our police central which is
7 the evidence tracking system on the computer and put it in
8 the system electronically to make labels to go on the
9 evidence.

10 Q And what did you do with those labels?

11 A I put those on the actual outside of the evidence
12 bag and on the chain of custody also.

13 Q I want to show you State's Exhibit 36. What is
14 portrayed to be in that photograph?

15 A This is actually the bag with the defendant's
16 name, what we put in it and the evidence labels that I
17 placed on the bag.

18 Q Does that bag appear to be sealed?

19 A Yes.

20 Q Are these special evidence bags that you're
21 providing?

22 A Yes, they are provided by the department.

23 Q And how do you seal the bag?

24 A The strip on the back, if you peel that strip off
25 it's got a glue substance and if you go over that and it

David MacAlhaney - Redirect

1 seals the bag.

2 Q Once it's glued, is there any way to open it
3 again?

4 A No, you'd have to cut it.

5 Q In this photograph, is that bag still in tact?

6 A Yes, it is.

7 MS. DRAWDY: Your Honor, at this time we'd
8 like to move State's Exhibit 36 into evidence?

9 THE COURT: Any objection?

10 DEFENDANT MCCALL: No objection.

11 THE COURT: Into evidence without objection.

12 (Bag marked as State's Exhibit No. 36 for
13 identification, was admitted into evidence.)

14 (Handwritten log marked as State's Exhibit
15 No. 38 for identification.)

16 BY MS. DRAWDY:

17 Q In addition to that chain of custody, is there?
18 Other documentation of what happens with the sample when
19 you have it in your office?

20 A We also keep a handwritten log of all the
21 evidence.

22 Q I'm going to show you State's Exhibit 38 and ask
23 you if that is a copy of what you maintain permanently in
24 your office?

25 A Yes, it is.

David MacAlhaney - Redirect

1 Q And does that contain the information about this
2 sample?

3 A Yes, it does.

4 Q Does that document the movement in and out of
5 what you refer to as the refrigerator log?

6 A That's correct.

7 Q Tell me exactly what the refrigerator is and what
8 type of security is maintained there.

9 A The refrigerator is in a secured evidence room
10 that's key card access only for supervisors to get into
11 the evidence room. The evidence refrigerator has a
12 padlock on it with a combination lock that the evidence
13 custodian's have.

14 Q And are you one of the evidence custodians?

15 A I am.

16 Q Does this refrigerator log show that the samples
17 from Mr. McCall were placed in the refrigerator?

18 A Yes.

19 Q By whom?

20 A By the chain of custody I actually opened the
21 refrigerator myself and he placed it in there.

22 Q And then you locked ---

23 A The refrigerator back up, that's correct.

24 Q Did you personally have any more interaction with
25 this sample?

Don Bannister - Direct

1 A No, when it was transferred, it was transferred
2 by another supervisor.

3 Q And does it show in this log when that happens?

4 A Yes, it has the date and where it went and which
5 supervisor signed it out and who he gave it to to
6 transport it.

7 Q Who was that?

8 A First Sergeant Bannister would have been the one
9 who removed it from the refrigerator and he gave it to
10 Trooper Perry to drive it to central evidence in Columbia.

11 Q Is that same transaction reflected on the chain
12 of custody that is displayed in Exhibit 37?

13 A Yes, it is.

14 Q Please answer questions defense might have.

15 DEFENDANT MCCALL: I don't have any questions
16 for you.

17 THE COURT: Thank you, sir, you may step
18 down.

19 MS. DRAWDY: May Sergeant Hiatt be released
20 from his subpoena?

21 THE COURT: Yes, ma'am.

22 MS. DRAWDY: The State calls First Sergeant
23 DL Bannister.

24 THE CLERK: Sir, could you please come
25 forward to be sworn in. Place your left hand on the Bible

Don Bannister - Direct

1 and raise your right.

2 DON BANNISTER, having been duly sworn,
3 testified as follows:

4 Thank you. You may be seated. State your
5 name for the record.

6 THE WITNESS: Don Bannister.

7 DIRECT EXAMINATION

8 BY MS. DRAWDY:

9 Q First Sergeant Bannister, you are also an
10 evidence custodian for the local highway patrol office?

11 A Yes.

12 Q I'm going to show you State's Exhibit 38 and 37
13 and ask you if you recognize those documents?

14 A I do.

15 Q Do these documents contain a record of when the
16 samples were next handled by anyone?

17 A Yes.

18 Q And what do these documents show?

19 A They reflect that on the 5th of March 2012, I
20 removed the evidence from the refrigerator, logged it to
21 myself, and then I gave it to Trooper Perry to transport
22 to our central evidence facility.

23 Q You gave it to Trooper Perry and he took it to
24 your central evidence facility, where is that?

25 A In Columbia.

Don Bannister - Direct

1 Q Is that where all biological sample and pretty
2 much all evidence you have in cases ultimately go?

3 A Yes.

4 Q Now, when you took the sample out of the
5 refrigerator, was it still in an evidence bag?

6 A Yes, ma'am.

7 Q Does that appear to be a photograph of that bag?

8 A Yes.

9 Q Was State's Exhibit 37 kept with that in the
10 refrigerator?

11 A The original stays with the evidence.

12 Q The actual sealed package?

13 A Yes.

14 Q The evidence log is something you keep local to
15 keep track as well?

16 A Yes.

17 Q Did Trooper Perry sign the chain of custody that
18 stays with the sample acknowledging he received it?

19 A Yes, he printed his name and initialed.

20 Q As far as you know did he leave with the sample
21 and go down to central evidence in Columbia?

22 A Yes, ma'am.

23 Q Please answer any questions defense may have.

24 DEFENDANT MCCALL: We don't have any
25 questions.

Luke Perry - Direct

1 MS. DRAWDY: May First Sergeant Bannister be
2 released from his subpoena?

3 THE COURT: Yes, ma'am.

4 Thank you for coming.

5 MS. DRAWDY: The State calls Investigator
6 Luke Perry.

7 THE COURT: Ladies and gentlemen, let me tell
8 you right now I know we're going through some various
9 tedious evidence but understand that the State wishes to
10 produce evidence of fungible materials, then they must
11 establish a strict chain of custody. It's unavoidable.
12 Therefore, what you're hearing now is chain of evidence
13 custody which they hope to introduce at a later date. So
14 bare with us. I see your body language and it looks
15 probably like mine.

16 MS. DRAWDY: Let's not talk about mine.

17 THE COURT: Could you come up to be sworn in,
18 place your left hand on the Bible and raise your right
19 hand.

20 LUKE PERRY, having been duly sworn,
21 testified as follows:

22 Thank you. Please be seated. State your
23 name for the record.

24 THE WITNESS: Lance Corporal Luke Perry.

25 DIRECT EXAMINATION

Luke Perry - Direct

1 BY MS. DRAWDY:

2 Q Trooper Perry, did you, in fact, take custody of
3 this sample?

4 A I did.

5 Q On what date did you take custody of it?

6 A March 5, 2012.

7 Q That was the day following this incident?

8 A Yes.

9 Q Did you go straight to Columbia to the central
10 evidence facility?

11 A I did.

12 Q And did you deliver that sample?

13 A I did.

14 Q When you received that sample from First Sergeant
15 Bannister, can you described how it was packaged?

16 A As stated before it was packed in our Department
17 of Public Safety Evidence bag, and it was properly seal
18 and it had the original chain of custody attached to it.

19 Q Did you deliver those items to central evidence?

20 A I did.

21 Q Who did you deliver them to?

22 A To First Sergeant Rivers.

23 Q And is that transfer documented on this chain of
24 custody?

25 A It is. I have written my name and initialed it

Luke Perry - Direct

1 that I received it from First Sergeant Bannister, then
2 also written my name and initialed that I transferred it
3 to First Sergeant Rivers in Columbia.

4 Q Did also First Sergeant Rivers also sign that
5 acknowledging receipt?

6 A He did. He wrote his name and initiated by it.

7 Q And when you handed it to first Sergeant Rivers,
8 was it sealed properly sealed in its evidence bag?

9 A It was.

10 Q Please answer any questions defense counsel might
11 have.

12 DEFENDANT MCCALL: I don't have any
13 questions.

14 THE COURT: Thank you, you may step down.

15 MS. DRAWDY: The State calls First Sergeant
16 Rivers.

17 THE CLERK: Place your left hand on the Bible
18 and raise your right.

19 RIVERS, having been duly sworn, testified as
20 follows:

21 Thank you. Please be seated. State your
22 name for the record.

23 THE WITNESS: First Sergeant Rivers.

24 DIRECT EXAMINATION

25 BY MS. DRAWDY:

First Sergeant Rivers - Direct

1 Q First Sergeant Rivers, are you in charge of
2 central evidence in Columbia for the South Carolina
3 Highway Patrol?

4 A Yes.

5 Q And are you the custodian of the records for that
6 facility?

7 A Yes.

8 Q Do you have the original documents that you keep
9 at central evidence regarding samples like this and in
10 particular this sample with you today?

11 A Yes.

12 Q I'm going to ask you to tell me if State's
13 Exhibit 37 is a true and accurate copy of your office
14 records?

15 A Yes, ma'am, it is.

16 Q And these records are maintained in the ordinary
17 course of your agency's business?

18 A Yes.

19 MS. DRAWDY: Your Honor, we'd like to move
20 this in as State's Exhibit 37.

21 DEFENDANT MCCALL: No objection.

22 THE COURT: Okay. The same is admitted into
23 evidence.

24 (SCDPS chain of custody marked as State's
25 Exhibit No. 37 for identification was admitted into

First Sergeant Rivers - Direct

1 evidence.)

2 BY MS. DRAWDY:

3 Q First Sergeant Rivers, refer to your chain of
4 custody, did you receive this package from Luke Perry?

5 A Yes, I did, on March 5, 2012.

6 Q Did you sign the chain of custody reflecting that
7 fact?

8 A Yes, I did.

9 Q What type of package did he deliver to you?

10 A The package was in a DPS evidence bag that was
11 marked with labels identifying the case numbers as well as
12 the defendant's name.

13 Q Are those bar coded labels?

14 A Yes, ma'am.

15 Q So you also have a computer tracking system for
16 all of these items?

17 A Yes.

18 Q And do those bar labels match that are on the
19 chain of custody coinciding matching on the outside of the
20 evidence bag?

21 A Yes, ma'am.

22 Q After you received this from Trooper Perry, what
23 did you do with it?

24 A Once I receive it, then I would go into our
25 computer system and I will actually electronically change

First Sergeant Rivers - Direct

1 the location from the post location, here in Greenville,
2 to our location at central evidence facility. Once I
3 completed that, I will take it back into our secure
4 warehouse which is also identified and termed as our safe
5 and I will put in our refrigerator at that time.

6 Q Who has access to that area?

7 A The only people who have access to that area or
8 central evidence employees which consist of five officers.

9 Q When they access that area, is there a way that
10 it is tracked?

11 A Yes, it's tracked through a scantron keypad.

12 Q When is the next time that this evidence it's
13 handled?

14 A The next time it was handled was on March 8,
15 2012, identifying on the chain of custody being removed
16 from the safe, the refrigerator, by Trooper Ellen Dunkel,
17 and employee of central evidence facility.

18 Q Where does it indicate that Trooper Ellen Dunkel
19 took this?

20 A She took it from central evidence and the reason
21 for removal was delivery to SLED.

22 Q And had Trooper Dunkel been subpoenaed to be here
23 today?

24 A Yes, she was.

25 Q And is she going to be able to be here today?

Amy Stevens - Direct

1 A No.

2 Q Why not?

3 A She fell ill over the weekend and she was out
4 sick yesterday as well as today and was certainly not in
5 any condition to travel or testify.

6 Q Please answer any questions that defense counsel
7 may have.

8 DEFENDANT MCCALL: I don't have any
9 questions.

10 MS. DRAWDY: May Trooper Rivers be released
11 from his subpoena?

12 THE COURT: Sure. Thank you for coming.

13 MS. DRAWDY: The State calls Amy Stevens.

14 THE CLERK: Please come up to be sworn in.
15 Place your left hand on the Bible and raise your right.

16 AMY STEVENS, having been duly sworn,
17 testified as follows:

18 Thank you. You can be seated. State your
19 name for the record.

20 THE WITNESS: Amy Stevens.

21 MS. DRAWDY: Your Honor, let me check with
22 co-counsel. I hope we're not getting messed up with our
23 numbering.

24 DIRECT EXAMINATION

25 BY MS. DRAWDY:

Amy Stevens - Direct

1 Q Ms. Stevens, where are you employed?

2 A I'm employed with the South Carolina Law
3 Enforcement Division also known as SLED.

4 Q And where do you physically work?

5 A Our office is based out of Columbia, South
6 Carolina.

7 Q Are you associated with the SLED laboratories?

8 A I am. I'm a forensic technician in the evidence
9 control department and our daily responsibilities are to
10 log in, package and transfer evidence for forensic
11 analysis.

12 Q Were you the forensic technician who took this
13 into the custody of SLED?

14 A Yes, I was. I received this particular evidence
15 box on March 8, 2012 at 9:50 a.m.

16 Q Did you start a SLED chain of custody when you
17 received this?

18 A Every case that is submitted to our laboratory an
19 electronic chain of custody is generated.

20 Q And did you bring that complete chain of custody
21 with you today at our request?

22 A Yes, I did.

23 Q This has been marked as State's Exhibit 40.

24 DEFENDANT MCCALL: No objection, Your Honor.

25 THE COURT: Alright, 40 shall be admitted

Amy Stevens - Direct

1 without objection.

2 (Paperwork marked as State's Exhibit No. 40
3 for identification and admitted into evidence.)

4 BY MS. DRAWDY:

5 Q Who submitted this evidence to you?

6 A I received the evidence from LM Dunkel from the
7 South Carolina Department of Public Safety.

8 Q And is there some type of documentation that LM
9 Dunkel brought it to you indicated on the SLED chain of
10 custody?

11 A Yes, her signature is on this chain of custody.

12 Q I'm going to show you what has been marked as
13 State's 36. It is a photograph of an evidence bag. Does
14 that appear to be a photograph taken by SLED?

15 A Yes, it is.

16 Q Is there a SLED label placed depicted in that
17 photograph?

18 A Yes, it is.

19 Q Is that associated with this particular chain of
20 custody and evidence?

21 A Yes, it is.

22 Q What condition was the packaging that Trooper
23 Dunkel brought this in? What was the condition of it?

24 A I received evidence bag from Trooper Dunkel from
25 the Department of Safety.

Amy Stevens - Direct

1 Q And what did you do with that sealed evidence
2 bag?

3 A Once I received the sealed evidence bag, I would
4 place it in a SLED heat seal pouch, seal the heat seal
5 pouch and the main officer, which in this case was Office
6 Ellen Dunkel, she would have initialed and dated the top
7 of the heat sealed pouch as well as time and date the
8 front and the back.

9 Q I'm going to show you State's Exhibit 39 and ask
10 you what that appears to be?

11 A This is a SLED heat sealed pouch which is
12 initialed and dated by Ellen Dunkel and has the associated
13 lab number to this case to the outside of the heat sealed
14 pouch.

15 Q And is that still sealed in that photograph?

16 A Yes, it is.

17 Q So that's the condition that it was in when it
18 left your custody?

19 A Yes, it was.

20 Q Who did you give it to?

21 A Once I logged it in and placed the evidence into
22 our evidence room, on March 19, 2012, I retrieved it from
23 our evidence room and transferred it to our forensic
24 technician Brandon Williams of the toxicology department.

25 Q Is that movement into the forensic room

Amy Stevens - Direct

1 documented on the chain of custody?

2 A Yes, it is.

3 Q How does it get there?

4 A I basically would walk it back and place it into
5 the refrigerator located in our evidence room.

6 Q How does the documentation get entered on the
7 chain of custody?

8 A Everything within our department -- actually
9 inside the laboratory is electronically documented. Every
10 evidence that is admitted to our laboratory a bar code is
11 placed on every piece of evidence. Every time evidence is
12 transferred, that bar code will be scanned and the
13 movement of the evidence is documented in the chain of
14 custody.

15 Q And who was the next person to receive -- to
16 handle this evidence?

17 A After I logged it in and transferred it to the
18 evidence room, I then also removed it to the evidence room
19 and transferred it to forensic technician Brandon
20 Williams.

21 Q Was he at that time an employee who was part of
22 the SLED toxicology lab?

23 A Yes, he was.

24 Q Please answer any questions that defense counsel
25 might have.

Wendy Bell - Direct

1 DEFENDANT MCCALL: No question, Your Honor.

2 THE COURT: Thank you, very much.

3 MS. DRAWDY: We'd call Wendy Bell to the
4 stand.

5 THE CLERK: Ms. Bell, please place your left
6 hand on the Bible and raise your right.

7 WENDY BELL, having been duly sworn, testified
8 as follows:

9 Thank you. You may be seated. Please state
10 your name for the record.

11 THE WITNESS: Wendy Bell.

12 BY MS. DRAWDY:

13 Q Captain Bell, are you also an employee of SLED?

14 A I am.

15 Q How long have you been with SLED?

16 A I been employed for 17 years.

17 Q Were you affiliated with the toxicology
18 department at one time?

19 A I was. I currently supervise -- I'm an assistant
20 lab director so the toxicology department still falls
21 under me, but at the time in 2012 I was the lieutenant of
22 the toxicology department which means I was the direct
23 supervisor of that unit.

24 Q Did Brandon Williams work in that unit?

25 A He did.

Wendy Bell - Cross

1 Q What was his position and what were his
2 responsibilities?

3 A Brandon is a forensic technician and his duties
4 are to primarily keep the lab running smoothly and get the
5 analyze the things they need. Daily he would go down and
6 retrieve evidence from our central evidence storage, bring
7 them upstairs, document the condition of that packaging.
8 He would one at a time open each evidence packaging pouch
9 and photograph all of the evidence and any packaging that
10 inside those. He would also put the case number and his
11 initials on every item of evidence that's there and make
12 sure that it match the description of what was submitted
13 to our laboratory.

14 At that time, he would take that evidence and
15 put it back into the heat sealed pouch, reseal it and put
16 it in our refrigerator for the next analyst to pick it up.

17 Q Does it conform to SLED policies and procedures
18 to guard the integrity of the samples?

19 A It does.

20 Q Does this chain of custody indicate that the
21 samples were properly handled throughout the entire
22 process?

23 A It appears all policies were followed and
24 safeguarded.

25 Q Brandon Williams, does he still work for you?

Don Bannister - Cross

1 A He's now employed at South Carolina DHEC.

2 Q Is he available to testify today?

3 A I believe he's out of the country on vacation.

4 Q Please answer any questions defense counsel might
5 have.

6 CROSS-EXAMINATION

7 BY MR. ERWIN:

8 Q As to the work that Mr. Williams did in this
9 case, when you were speaking about what he did, you were
10 saying what procedures would have dictated, right?

11 A And from what I can tell from the pictures that
12 he made.

13 Q Yeah, right, so you're looking at the pictures
14 and his signature and initials on the bags and stuff like
15 that, but you didn't follow around and watch him take
16 every step in this process, did you?

17 A No, but what I didn't mention is this is a two
18 person process. He's the one logged in but there is
19 always a second person assisting, so any variations would
20 have been noted.

21 Q Do you know who the second person was in this
22 case?

23 A We did not have note of that in this case.

24 Q Did you see the second person?

25 A I didn't.

Marybeth McCormick - Direct

1 Q Again, you're speaking from the standard policies
2 and procedures. As to specific actions that were taken in
3 this case, you have no idea.

4 A Right.

5 MR. ERWIN: No further questions.

6 THE COURT: Any redirect?

7 MS. DRAWDY: No, Your Honor. Please release
8 this witness.

9 THE COURT: Thank you for being here.

10 MS. DRAWDY: The State calls Marybeth
11 McCormick.

12 THE CLERK: Ms. McCormick, can you come
13 forward.

14 MARYBETH MCCORMICK, having been duly sworn,
15 testified as follows:

16 Thank you. You may be seated. Please state
17 your name for the record.

18 THE WITNESS: Marybeth McCormick.

19 DIRECT EXAMINATION

20 BY MS. DRAWDY:

21 Q Good afternoon, Ms. McCormick. Did you drive up
22 from Columbia, today?

23 A Yes.

24 Q Are you employed in the SLED laboratory?

25 A Yes.

Marybeth McCormick - Direct

1 Q How long have you been employed with the SLED
2 laboratory?

3 A Seven years.

4 Q What is your current position?

5 A Currently, I am a forensic scientist in the drug
6 analysis department.

7 Q What was your position in March of 2012?

8 A In addition to working in the drug analysis
9 department, I was also assisting the drug analysis
10 department with drug analysis.

11 Q Can you tell me what kind of education, training
12 and experience you have had to prepare you to perform the
13 duties that you perform at SLED?

14 A I have a bachelor of science degree in chemistry
15 and also a master of teaching chemistry and physics both
16 from the University of South Carolina. I completed the
17 training at SLED in the drug analysis department as well
18 as the toxicology blood analysis training.

19 Q So you are qualified as forensic technician?

20 A My title now is a forensic scientist.

21 Q At that time a forensic technician?

22 A Yes.

23 Q You were a forensic scientist then.

24 A I was not a full toxicologist at that time.

25 Q I need to hand you State's Exhibit 40 and ask you

Marybeth McCormick - Direct

1 if you recognize that document?

2 A Yes.

3 Q What is that document?

4 A This is a chain of custody associated with
5 L1202821.

6 Q And that's the SLED lab number?

7 A Yes.

8 Q And that's the SLED lab number for the sample in
9 this case?

10 A Yes.

11 Q Are you the next person after Brandon Williams to
12 handle this evidence?

13 A Yes.

14 Q I'm going to ask you what you did in order to
15 obtain custody of this evidence?

16 A I retrieved the evidence bag from the toxicology
17 refrigerator. I labeled a glass vile with the lab number.
18 I then cut into the evidence bag.

19 Q Before you cut into the evidence bag, did you
20 examine it?

21 A Yes, I made sure that it was sealed and it was.

22 Q It was sealed.

23 A Yes.

24 Q Had it not been sealed, what would you have done?

25 A The analysis would have been stopped and I would

Marybeth McCormick - Direct

1 have contacted the supervisor.

2 Q Did the sealed evidence bag have the appropriate
3 initials over the seal to indicate that Brandon Williams
4 was the last person to handle it?

5 A Yes.

6 Q Now, for what purpose did you retrieve the sample
7 from the refrigerator?

8 A To test if there was any alcohol present in the
9 blood.

10 Q Is that a standard first test at SLED for any
11 blood sample that's sent to SLED in a DUI case?

12 A Yes.

13 Q And please describe the procedure that you
14 followed at this time?

15 A I labeled a glass vile with the associated lab
16 number. I made sure the evidence bag was sealed which it
17 was. I made sure that the label on the evidence bag
18 matched my label vile. I think cut into the evidence bag,
19 retrieved one of the tubes of blood, placed a sample of
20 blood into that glass vile and then it was placed on an
21 instrument which was in this case was a Hespace
22 Catscomedagraph(ph) or Hespace CG for short.

23 Q What were the result of that test?

24 A Negative for alcohol.

25 Q After you finished with the evidence sample, the

Marybeth McCormick - Direct

1 original sample, let me show you State's Exhibit 33 and 32
2 an ask you if that is a photograph if the evidence that
3 was contained in that bag?

4 A Yes.

5 Q Did you place those back into the sealed -- I
6 guess it wouldn't be sealed at that time -- back in to the
7 evidence bag?

8 A I placed the evidence back into the bag. I heat
9 sealed it, initialed and dated.

10 Q And then what did you do with it?

11 A I returned it to the toxicology refrigerator.

12 Q How long was it in your custody, the actual
13 sample from Mr. McCall?

14 A It was actually in my custody for less than an
15 hour form 10:13 a.m., to 11:03 a.m.

16 Q And according to the chain of custody, who was
17 the next person to retrieve the sample for some type of
18 testing?

19 A Carmen Tucker.

20 Q Please answer any questions defense counsel might
21 have.

22 DEFENDANT MCCALL: We have no questions.

23 THE COURT: Thank you very much. Thank you
24 for coming. You may be excused.

25 MS. DRAWDY: The State calls Carmen Tucker.

Carmen Tucker - Direct

1 THE CLERK: Please place your left hand on
2 the Bible and raise your right.

3 CARMEN TUCKER, having been duly sworn,
4 testified as follows:

5 Thank you. You may be seated. Please state
6 your name for the record.

7 THE WITNESS: Carmen Tucker.

8 DIRECT EXAMINATION

9 BY MS. DRAWDY:

10 Q Ms. Tucker, I'd ask you to refer to State's
11 Exhibit 40 as you answer questions, if you would.

12 A Sure.

13 Q Are you the next person to handle this sample?

14 A I am.

15 Q On what date did you retrieve the sample from the
16 secure location?

17 A March 14, 2012.

18 Q Do you have a time that you did that?

19 A 9:27 a.m.

20 Q For what purpose?

21 A For a drug screen analysis.

22 Q What type of ---

23 A The blood.

24 Q Up to this point, no sample has been performed on
25 the urine; is that correct?

Carmen Tucker - Direct

1 A That's correct.

2 Q Please describe the procedure, your observations
3 about the packaging and what you did?

4 A I would go to the walk-in refrigerator which is
5 what we have as describe before having access with a
6 magnetic key card, I have no own, retrieve the bag of
7 evidence then make sure the label matches what I have on
8 my documentation to make sure I have the right bag of
9 evidence. I check the seals to make sure the person prior
10 to me has sealed it properly and there is initials and
11 dates of that person. I will then proceed to cut into the
12 bag to retrieve the blood tube that I need for analysis.

13 Q What is your position at SLED?

14 A Forensic toxicologist level one. I wasn't a full
15 toxicologist at the time.

16 Q Please share of us your time at SLED and training
17 and experience in order to perform the analysis that you
18 were about to perform on this sample?

19 A I have a bachelor's of science and a master's of
20 science in chemistry. I have about close to three years
21 experience in pharmaceutical preparations and chemistry at
22 RTI North Carolina. I also came to SLED and originally
23 started out in the drug analysis lab for about four years
24 and then transferred over to tox and received in house
25 training.

Carmen Tucker - Direct

1 Q Did your in house training include proper
2 handling of samples and policies and procedures?

3 A Yes, it did.

4 Q Did you follow all those policies and procedures?

5 A Yes, I did.

6 Q And you said you did a drug screen?

7 A Yes.

8 Q And it's a screening test?

9 A Yes, it's a presumptive test for a handful of
10 plastic compounds that we look for.

11 (Documents marked as Exhibits No. 41 and 42
12 for identification.)

13 BY MS. DRAWDY:

14 Q What type of results did you receive on your
15 test?

16 MR. ERWIN: Objection, Your Honor, may we
17 approach?

18 THE COURT: Sure.

19 (Counsel approached the bench.)

20 Alright, ladies and gentlemen, when we have
21 little bench conferences like this, essentially what we're
22 talking about administrative issues, objections, evidence,
23 admissibility, evidence that may be posed and a lot of
24 times attorneys are looking to me for some guidance about
25 how and when I would like for them to impose those

Carmen Tucker - Direct

1 objections.

2 I just wanted you to know there are not
3 secrets to what we're doing up here but sometimes when we
4 have discussions they don't need to be on the record.
5 They may be admissible, they may not be but we don't know
6 until we have that discussion.

7 At this point we are midway through the
8 afternoon and after this witness, we'll have one
9 additional witness and then we'll conclude. So we're at a
10 pretty good pause point. There is a matter of law that I
11 will need to take up with the attorneys for a few minutes
12 before we move on with this testimony. So I'm going to
13 ask you to take a break for about 10 or 15 minutes. I
14 don't know how long it's going to take you to get to the
15 legal issues, and then we'll come back and we'll conclude.
16 Please don't discuss the case.

17 (Jury exits the courtroom.)

18 MS. DRAWDY: Your Honor, can Ms. Tucker step
19 down while we do this.

20 THE COURT: Sure.

21 Mr. Erwin, I know that you have a motion or
22 objection to put on the record, sir.

23 MR. ERWIN: I would object to the blood
24 coming in at all and therefore the results of the test and
25 the test itself coming in and I've got a couple of reasons

Carmen Tucker - Direct

1 for that, Your Honor. First would be the objection that
2 Mr. Chambers posed pretrial yesterday. I wasn't here for
3 that and I'm pretty sure I got a handle on what he
4 objected to and I a renewing his objection.

5 I also have an additional objection as to the
6 chain of custody of this evidence. From the testimony of
7 the last several witnesses we've been hearing from this
8 afternoon, we had a complete chain. The prosecutor have
9 to acknowledge there were two gaps that came up in the
10 chain of custody, one was Trooper Dunkel who did not
11 testify at all.

12 The evidence went from Sergeant Rivers to
13 Trooper Dunkel and then to Ms. Stevens. I acknowledge
14 that both Sergeant Rivers and Ms. Stevens testified that
15 they gave it to and received it from Trooper Dunkel and
16 she is not here to testify at all about what happened to
17 that evidence when it was in her possession. I would
18 argue that it's a pretty big break in the chain of
19 custody.

20 And, Your Honor, it is a very similar
21 situation with Brandon Williams, the forensic technician
22 from SLED. Again, it went from Amy Stevens to him and
23 then to Ms. McCormick after that. And I know
24 Ms. McCormick was able to testify after that about
25 policies and procedures and practices and stuff like that

Carmen Tucker - Direct

1 and I acknowledge that it sounds like everything was
2 followed; however, without that witness here to testify
3 about what happened when he was the only in custody of
4 this evidence, there is again a whole in the chain of
5 custody.

6 Again, this is fungible evidence. There is a
7 reason why chain of custody is strictly enforced in these
8 cases and it's because it's easy to get this stuff
9 confused. There are two holes here that we have no one
10 here to testify to and I would argue that because of that,
11 the evidence itself can not be in evidence, and as a
12 result the testing on that evidence can not itself come
13 into evidence.

14 Your Honor, I believe the case of State v
15 Williams, a South Carolina case, says that the proof of
16 the chain of custody need not negate all possibility of
17 tampering but my establish a complete chain of evidence as
18 far as practically. We have documented every person that
19 handled this and there is -- this goes to the weight of
20 the evidence but not the admissibility. We have shown
21 very clearly who handled it, what they did, and that two
22 people never did any analysis and would not have had any
23 reason to open the evidence, and, in fact, did not open
24 the evidence are the only two missing.

25 We had the person on either side to confirm

Carmen Tucker - Direct

1 the packaging of the samples in between the times that
2 they handled it, and we believe that the State has proven
3 the chain of custody is in order to establish
4 admissibility.

5 THE COURT: Alright, while proof of the chain
6 of custody is fungible evidence is a strict standard. It
7 is not an absolute standard, and the law suggests that the
8 State must prove it as much as practice and establish
9 everyone who may have touched it along the line, but
10 testimony for each and every one of those witnesses is not
11 required under the law.

12 If there is a lack of testimony from someone
13 who may have handled it, that goes to weight of the
14 evidence pursuant to State versus Carter and not it's
15 admissibility.

16 Certainly you'll have the opportunity to
17 argue with regard to the weight of that evidence and
18 whether it should be considered credible by the jury, but
19 it does not negate it's admissibility.

20 With respect to renewing in limine motions, I
21 respectfully deny it on the same basis that we had
22 discussed before we began the trial of the case.

23 MR. ERWIN: Thank you, Your Honor.

24 THE COURT: Let's take five or ten minutes
25 and make sure they're ready to come back in. Let me make

Carmen Tucker - Direct

1 sure I'm square on this, you're going to finish up the
2 current witness and then have the toxicologist and that
3 will be it.

4 MS. DRAWDY: Thank you, Your Honor.

5 (There was a brief break.)

6 THE COURT: Okay. Let's bring them in.

7 (Jury re-enters the courtroom.)

8 Your witness, ma'am.

9 BY MS. DRAWDY:

10 Q Ms. Tucker, am I correct in my understanding that
11 you did an initial screen test?

12 A Yes.

13 Q And would any positives be reported by your lab
14 without going to a senior toxicologist to do additional
15 testing and or to check your work?

16 A No, ma'am. The way we write our reports is when
17 we do the initial screen or the compounds or classic
18 compounds, anything that's negative is listed on the
19 reports and if it is positive, it is then goes on to be
20 confirmed by the assigned toxicologist.

21 Q Please answer any questions that defense counsel
22 might have.

23 DEFENDANT MCCALL: No questions.

24 THE COURT: Thank you, Mr. McCall.

25 You may step down.

Shanna Sorrells - Direct

1 MS. DRAWDY: Your Honor, I don't recall if I
2 moved in State's 40 or not. Can you tell me, Madam
3 Reporter.

4 COURT REPORTER: Yes.

5 MS. DRAWDY: The State calls Shanna Sorrells.

6 THE CLERK: Would you please state forward to
7 be sworn.

8 SHANNA SORRELLS, having been duly sworn,
9 testified as follows:

10 Thank you. You may be seated. Would you
11 state your name for the record.

12 THE WITNESS: Shanna Sorrells.

13 DIRECT EXAMINATION

14 BY MS. DRAWDY:

15 Q Ms. Sorrells, are you employed by SLED?

16 A Yes, I am.

17 Q And are you the senior toxicologist assigned on
18 this case?

19 A Yes, I am.

20 Q Would you please give us your background and
21 training as it relates to your employment as a senior
22 toxicologist at SLED.

23 A I have a bachelor's degree in chemistry from the
24 University of South Carolina. I also have my master's
25 degree in analytical chemistry also from the State of

Shanna Sorrells - Direct

1 South Carolina. I had to go through an extensive year-
2 long training program in the toxicology lab. I'm one of
3 the senior toxicologist. I've had to undergo multiple
4 competency tests and proficiency tests every year to
5 maintain that so I am still able to analyze items
6 correctly I attended the highly recognized organ science
7 school of alcohol and driving and the organ science school
8 of drugs and driving.

9 Q Did you also receive training at SLED in their
10 policies and procedures?

11 A Yes, I did.

12 Q How long have you been associated with working in
13 the SLED toxicology lab?

14 A I had been at SLED for nine years but I worked in
15 the toxicology lab for eight years.

16 Q Have you ever been found by a court to be an
17 expert?

18 A Yes, I have.

19 Q What fields have you found to be an expert in?

20 A Forensic toxicology, forensic pharmacology,
21 chemistry and biology.

22 Q And have you testified in the area of forensic
23 toxicology on more than one occasion?

24 A Yes, I have.

25 Q Have you ever been offered as an expert in that

Shanna Sorrells - Direct

1 field and not been found to be qualified?

2 A No, I have not.

3 MS. DRAWDY: Your Honor, we'd like to offer
4 Ms. Sorrells in the area of forensic toxicology.

5 THE COURT: Any objection?

6 MR. ERWIN: Just brief voir dire, if you
7 don't mind.

8 THE COURT: Sure.

9 VOIR DIRE

10 BY MR. ERWIN:

11 Q Of those times that you testified in court, have
12 they all been on behalf of the State?

13 A No, they have not.

14 Q How many times have you testified on behalf of
15 the defense?

16 A Twice.

17 MR. ERWIN: I have no further questions and I
18 have no objection to her being qualified as an expert
19 witness.

20 THE COURT: Ladies and gentlemen, she has
21 been qualified as an expert witness and I will qualify her
22 as an expert witness.

23 The reason a party to a lawsuit may want to
24 qualify someone as an expert witness is because of
25 someone's expertise, experience and specific

Shanna Sorrells - Direct

1 qualifications that person may be able to testify as to
2 opinion evidence that a lay person would not otherwise be
3 able to testify to.

4 Now, understand, just because someone is
5 qualified as an expert witness doesn't mean that their
6 testimony has greater value than any other piece of
7 evidence that you receive in a trial.

8 You look at an expert witness's testimony in
9 the exact same light that you look at any other piece of
10 evidence that you receive in a trial, and that is, you
11 determine whether it has value and you determine whether
12 it has weight just like any other piece of evidence.

13 You may proceed.

14 BY MS. DRAWDY:

15 Q Ms. Sorrells, before you became a senior
16 toxicologist, did you perform the same types of testing
17 that Ms. Tucker and Ms. McCormick did?

18 A Yes, I did.

19 Q And how many different types of instruments that
20 you use in SLED for drug and alcohol analysis of blood
21 samples?

22 A Blood samples, I think during this time we had
23 five we were using.

24 Q Are they designed for different purposes?

25 A Yes, they are.

Shanna Sorrells - Direct

1 Q Did you also perform analysis on urine samples?

2 A Yes, I did, when it arose.

3 Q And, in this case, up until the point that you
4 received information about the case and you began working
5 with the samples yourself, had any analysis been done on
6 the urine?

7 A No, it had not.

8 Q Did you review the work of Ms. McCormick and
9 Ms. Tucker?

10 A Yes, I did.

11 Q Did you find it to be accurate and conforming to
12 the policies of SLED?

13 A Yes, I did and it did and all the controls fell
14 within the range of which they were supposed to fall.

15 Q Do these instruments have internal controls that
16 you can check to make sure readings are accurate?

17 A Yes, I did.

18 Q Did all of those tests fall into the parameters
19 to insure accuracy?

20 A All of the tests were within the parameters.

21 Q When did you first handle this evidence?

22 A I received it from the refrigerator on March 15,
23 2012.

24 Q And what type of procedure is involved in taking
25 it from the refrigerator?

Shanna Sorrells - Direct

1 A Once the drug screen is complete, the case is
2 then assigned to an analyst. This case was assigned to me
3 at random and it is placed on my shelf that is specific to
4 me in my refrigerator. That's how I knew it as assigned
5 to me.

6 I went into the refrigerator, retrieved the
7 case, came back to my lab bench, had my specific bar code
8 that is assigned to me specifically as an analysis,
9 scanned that, scanned the bar code and I put the case
10 electronically into my custody.

11 Q And did you examine the condition of the outer
12 evidence bag at the time you retrieved it?

13 A Yes, I did.

14 Q What was the condition?

15 A It was sealed and it was last sealed by Carmen
16 Tucker.

17 Q And the last person in the chain in the case who
18 handled it?

19 A That is correct.

20 Q For what purpose did you retrieve the sample?

21 A When I was given the case file, I reviewed the
22 blood alcohol and the drug screen and the drug screen had
23 a positive screen on it. It was my job then to go in,
24 confirm that that screen was positive, and to see if there
25 were any other drugs of concern present.

Shanna Sorrells - Direct

1 Q Do you report out as a lab in any public way as a
2 report or testimony before this confirmation analysis has
3 been performed by a senior analyst?

4 A No, we do not. We confirm any positive that is
5 given to us by the screen.

6 Q Were there positives that you confirmed?

7 A Yes, there was.

8 Q What type of instrument did you use to do that?

9 A I used a gaschromtography maspectometer which is
10 more commonly known as the GCMS.

11 Q What kind of results did you find?

12 A It was positive for methamphetamine.

13 Q Let's talk about a little bit about
14 methamphetamine. As a forensic toxicologist, are you
15 familiar with the apparent effects, the physiological and
16 biological effects of various drugs on the body?

17 A Yes, I am.

18 Q First, let's talk about the apparent effects, can
19 you tell me the typical way that this type of drug is
20 ingested?

21 A There are three ways that this drug is normally
22 ingested. Methamphetamine can be taken orally in a pill
23 shape or powder, it can be smoked and it can also be
24 injected intravenously.

25 Q And just to be clear, is methamphetamine a legal

Shanna Sorrells - Direct

1 substance to possess in South Carolina?

2 A In rare occasions, you can get a prescription for
3 it.

4 Q What are the recreational uses of this drug that
5 remain in the blood from the time of ingestion?

6 A From the time of ingestion, based off of what
7 I've learned, I did not -- methamphetamine has a half life
8 of about 10 hours which means after 10 hours half of it
9 disappears. As soon as you inject a drug your body
10 attacks it and it tries to break it down to get rid of it.
11 It metabolizes it. With methamphetamine, it begins
12 actually once you ingest it start metabolizing into
13 amphetamine in the system. I did not find a significant
14 amount of amphetamine. I did not find enough to trigger a
15 positive screen and I did not find enough to quantitate.
16 So you're looking at a very short time, sometime around 10
17 hours based off of what I found.

18 Q Are there any observable physical effects that
19 methamphetamine would cause a person to exhibit while
20 under the influence of the drug?

21 A Methamphetamine -- first you look for any kind of
22 stimulant not just methamphetamine. You'll see dilated
23 pupils, elevated heart rate and elevated blood pressures.

24 Q If someone has dilated pupils that has taken the
25 drug, is it safe to say that they were under the influence

Shanna Sorrells - Direct

1 of it as long as they're pupils are dilated?

2 A The effect of the drug is dilated pupils but as
3 long as the drug is in their system, they are under the
4 drug.

5 Q When you say in their system --

6 A The blood system.

7 Q Are there also ways to detect, historical use of
8 methamphetamine by testing urine?

9 A Yes, we use the urine to show a history. It's
10 not accurate for time because it can last up to three days
11 and longer for some drugs.

12 Q Is that the result that you just reported of the
13 testing -- this initial testing that was done? Did you
14 put that in a report?

15 A The blood testing?

16 Q Yes.

17 A Yes, I put it into a report.

18 Q What is the date of that report?

19 A April 20, 2012.

20 Q Do you have that report with you?

21 A I do, yes.

22 Q I'm going to show you State's Exhibit 41 and ask
23 you if this is your report.

24 A Yes, it is.

25 MS. DRAWDY: We'd like to introduce this into

Shanna Sorrells - Direct

1 evidence at this time.

2 MR. ERWIN: Subject to my prior objection.

3 THE COURT: Subject to your prior objection,
4 I will allow it into evidence.

5 (Report marked as State's Exhibit 41 for
6 identification and admitted into evidence.)

7 BY MS. DRAWDY:

8 Q I'd like to ask you a little bit more about
9 process and drug classes. This report, the initial drug
10 screen on this report, only reports the negatives?

11 A That is correct.

12 Q Any positives are passed along to you for
13 confirmation?

14 A Yes.

15 Q After you finished testing of the blood or taking
16 the sample out for testing, did you place it back in the
17 refrigerator?

18 A Yes, I did. After I finish, the case is returned
19 back into the refrigerator, but in this case it remained
20 in my custody until I was finished.

21 Q Did you have occasion to do additional testing?

22 A Yes, I did.

23 Q And when you did that additional testing, did you
24 do that on the blood sample?

25 A Yes, I did.

Shanna Sorrells - Direct

1 Q Did you do initial sampling on the urine sample?

2 A Yes, I did.

3 Q What caused you to do that?

4 A I was later informed after the initial receiving
5 of the case that Ativan or Lorazepam was expected.
6 Lorazepam is one of those drugs that a special analysis
7 has to be done for us to detect. Nothing in my original
8 case notes implied that I had any suspect to look for it
9 so I did not, at that time, until it was brought to that
10 attention.

11 Q And what class of drugs is Lorazepam?

12 A A class of drugs of benzodiazepine.

13 Q And the type of testing that Ms. Tucker did for
14 the initial drug screen, the drug screen that she
15 performs, does that include the benzodiazepine class?

16 A It does.

17 Q And the type of initial testing that SLED does,
18 will it often not detect Lorazepam on the initial screen?

19 A The benzodiazepine, they are between 35 and 40
20 different benzodiazepines. For one screen it is difficult
21 to detect all of those. They all have different
22 structures, so the benzodiazepine screen that we use
23 targets the most common one in particular diazepam which
24 is your Valium, Alprazolam or your Xanax. Lorazepam
25 doesn't not have a good interaction with the screen and

Shanna Sorrells - Direct

1 could not be detected along with our other benzodiazepines
2 in our benzodiazepine screen. A different instrumentation
3 method has to be used and a different distraction method
4 has to be used for benzodiazepines, it was not found on
5 the original report.

6 Q So did you do a different type of testing in
7 order to see whether or not there was Lorazepam and that
8 is commonly known as Ativan, one of the brands?

9 A Yes.

10 Q And when you performed that test, what did you
11 find as a result of that test?

12 A I did find the Lorazepam, but I also found a
13 compound called a compound called (unable to locate) which
14 is a metabolite of clonazepam which is commonly known as
15 Klonopin which also does not react with our screen.

16 Q And do these drugs you found have impairing
17 effects?

18 A By themselves, yes, they can. They are seen as
19 depressants. Benzodiazepines have a similar effect to
20 alcohol. You'll see similar effects most commonly
21 associated with alcohol.

22 Q And what type of physical manifestations of a
23 person who is under the influence of these drugs exhibit?

24 A A depressant slows you down. You'll see
25 drowsiness, just in general, confusion, dizziness

Shanna Sorrells - Direct

1 sometimes, just distancing.

2 Q And are there any other findings that you made as
3 a result of the additional testing that you did?

4 A Upon finding the (unable to locate) in the blood,
5 I had been informed of the Ativan, but I had not been
6 informed, but to confirm that, nobody told me Klonopin
7 could be present, I went to the urine. Urine shows a
8 wider range of time and in the urine I confirmed that the
9 (unable to locate) was present along with the present
10 Klonopin.

11 Q Did the urine also exhibit evidence of Lorazepam?

12 A Clonazepam is a metabolite. It also had
13 methamphetamine, amphetamine, anthropologic which is
14 another metabolite of methamphetamine.

15 Q The blood shows a more recent use, is that safe
16 to say?

17 A Yes. Urine just depends on how much you've had
18 to drink, how much you metabolize. So many factors go
19 into the urine that we only use it for a history and most
20 of your drugs can last in our urine up to 72 hours and
21 some can last much longer.

22 Q Would the ingestion of meth or laz and it's
23 different, please let me know, when it is ingested, how
24 long would it take for evidence to show up in the urine?

25 A That can vary on a log biological factors but it

Shanna Sorrells - Direct

1 usually starts to show up within one half life in the
2 urine. With the meth within ten hours the laz is much
3 shorter than that.

4 Q How close in time at ingestion does it take to
5 show up in the blood?

6 A It can show up in the blood -- you start
7 absorbing it as soon as you ingest it so it can show up in
8 the blood almost immediately.

9 Q In an amount that you can detect?

10 A Depending on how much was taken.

11 Q With the testing that you use?

12 A The testing that we use, yes.

13 Q Once a sample is removed from the body put in a
14 jar and vile, does the metabolizing of the sample end?

15 A Yes, it does.

16 Q So there's no further change to what's in the
17 blood and urine?

18 A No, it would not change.

19 Q The drugs we're talking about it would not?

20 A It would not, no.

21 Q Did you prepare a report with regard to your
22 additional testing?

23 A Yes, I did.

24 Q What was the date of that report?

25 A It was June 4, 2012.

Shanna Sorrells - Direct

1 Q Is this a copy of your report State's Exhibit 42?

2 A Yes, it is.

3 MS. DRAWDY: I'd like to move that into
4 evidence.

5 THE COURT: Mr. Erwin.

6 MR. ERWIN: Again, subject to my prior
7 objection.

8 THE COURT: Subject to your objection which
9 was denied it will be introduced as State's Exhibit 42.

10 (Report marked as State's Exhibit 42 for
11 identification was admitted into evidence.)

12 BY MS. DRAWDY:

13 Q Ms. Sorrells, at the levels you saw in the
14 defendant's blood of these substances, is it your opinion
15 it would have been safe for him to operate a motor
16 vehicle?

17 A No ---

18 MR. ERWIN: Your Honor, I would object to
19 that question and the answer. She's already testified
20 several times that it depends. I know she's been
21 qualified as an expert but it calls for a speculation
22 beyond her expertise.

23 THE COURT: I'll respectfully overrule the
24 objection. It's within the scope of her expertise. Go
25 ahead.

Shanna Sorrells - Cross

1 BY MS. DRAWDY:

2 Q In what manner would you expect for it to impair
3 him?

4 A The methamphetamine level I received at the time
5 of the blood draw was very high. You would see a lot of
6 the stimulating effects, dilated pupils. Your reactions
7 are going to be off when you're driving. It would not be
8 safe to operate a motor vehicle.

9 Q We discussed the crash, is there a crash after
10 using meth?

11 A Yes, and again you're coming off of the high.
12 Your body is very excited, overly excited for an extended
13 time and it's like you've been up for 48 hours and your
14 body just wants to shut down.

15 Q What type of appearance that a person have if
16 they were in the crash stages?

17 A You would see a lot of the oppressive effects
18 instead of the stimulant effects, drowsiness, droopy
19 eyelids, dizziness.

20 Q Thank you. Please answer any questions defense
21 has.

22 CROSS-EXAMINATION

23 BY MR. ERWIN:

24 Q It all depends, right? The results of these
25 tests that you're telling us about, you told her several

Shanna Sorrells - Cross

1 times that there's variables in there, right?

2 A About the elimination rates and absorption rates,
3 yes, there are.

4 Q And that has to do with the manner of the
5 ingestion of the drug, right?

6 A It can have -- it's going to affect your system a
7 lot faster if you take it intravenously than if you take
8 it orally because it doesn't have to go through the first
9 task metabolism cycle.

10 Q And it has to do with the tolerance of the person
11 using that drug?

12 A As long as the drug is in your blood stream, not
13 matter how fast you metabolize or absorb, as long as that
14 drug is in your drug screen, it's having an effect on your
15 system.

16 Q Okay. But the effect -- the degree of impairment
17 has to do with variables such as tolerance, right?

18 A I don't like the word tolerance. Tolerance is
19 more of a learned behavior. Best example is alcohol, for
20 a lot of alcoholics out there, they've learned to cope
21 with the effects. If they notice that they're waddling,
22 they'll just separate their feet a little wider or lean up
23 against something, but they are still having that CNS
24 repression. Same thing wit the stimulant, no matter how
25 you've learned to cope, it is still altering your brain

Shanna Sorrells - Cross

1 waves and the way you're thinking.

2 Q So call it whatever you want you would agree with
3 me depending on the way the drug is used and the amount of
4 drugs they've used in the past, drugs can effect different
5 people differently, right?

6 A Yes.

7 Q And obviously you've never met Mr. McCall before?

8 A No, I have not.

9 Q You weren't on scene for this accident, right?

10 A No, I was not.

11 Q You don't know what his behavior was like?

12 A No, I do not.

13 Q All you know is the number that came out when his
14 blood was put into the system?

15 A That is right.

16 Q And you would agree that depending on who he was
17 and what he was like, the effects of what that number
18 indicates as far as impairment was could be different?

19 A It could vary slightly between person to person,
20 but at this number as this level, you will see a CNS
21 stimulant effect.

22 Q That's hyperactivity, right, something that's
23 part of it?

24 A Yes, that is part of it.

25 Q So at this level, you expect excitation?

Shanna Sorrells - Redirect

1 A I say this for most people, yes, at this level.

2 Q So it can vary for different people?

3 A I said it can vary for different people.

4 MR. ERWIN: No further questions.

5 MS. DRAWDY: Redirect, Your Honor.

6 REDIRECT EXAMINATION

7 BY MS. DRAWDY:

8 Q Are you familiar with the term poly-drug effect?

9 A Yes, I am.

10 Q If someone had both methamphetamine and Lorazepam
11 in their system, would that produce a poly-drug effect?

12 A It could, yes.

13 Q Explain how the Lorazepam would interact in terms
14 of the impact it had on the individual?

15 A Just because you have a central nervous system
16 stimulant in your system and you add a central nervous
17 system depressant, that does not counteract the other
18 drug. They react on different parts so your system is now
19 fighting if it's going to be in the depressant mode or the
20 stimulant mode.

21 Q Are both drugs impairing drugs?

22 A Both of them are impair drugs.

23 MR. ERWIN: Brief recross, Your Honor.

24 RECROSS-EXAMINATION

25 BY MR. ERWIN:

State versus McCall

1 Q Again, poly-drug effects can have different
2 effects on different people, correct?

3 A That is correct.

4 Q It all depends on when those drugs were taken and
5 what manner they were taken?

6 A It can depend on when they are taken and how long
7 the drugs were taken.

8 Q So, yes.

9 A Again, I'm not going to answer yes, completely to
10 your question but it can depend on when they were taken
11 and how long of a time that person is taking them.

12 Q I'm going to get you to say yes to one question.
13 So it does depend on who that person is, how long they've
14 taken it and how much they've taken, right?

15 A It can depend on this.

16 Q All of which in this case you have no idea,
17 right, because that's not your job, right?

18 A No, it is not.

19 MR. ERWIN: I have no further questions.

20 RE-REDIRECT EXAMINATION

21 BY MS. DRAWDY:

22 Q Regardless of whether it's your job or not, do
23 you have an idea about it based on scientific principles
24 that you saw in the samples?

25 A Based on multiple studies that have been done not

State versus McCall

1 only across this country but across the world and based on
2 what we have scene on a regular basis just coming through
3 the tox lab, this level of methamphetamine is impaired.

4 MS. DRAWDY: Thank you.

5 THE COURT: You can step down.

6 MS. DRAWDY: Can she be excused?

7 THE COURT: Yes. Anything further from the
8 State this afternoon?

9 MS. DRAWDY: Nothing further, the State will
10 have no more witnesses today.

11 THE COURT: How many do you anticipate?

12 MS. DRAWDY: About four.

13 THE COURT: Alright, ladies and gentlemen,
14 we're going to recess for this afternoon, we'll follow the
15 same schedule and if you would be here at 9:15 and we'll
16 start promptly at 9:30.

17 The State has four witnesses. I don't how
18 long that it will take and that sounds to me like most of
19 the morning will be occupied by the State. The defense
20 may also elect to put evidence in the record. If the
21 defense would elect to do that, then I would imagine we
22 would probably be taking evidence for most of tomorrow.
23 If that is the case, we would probably go to argument and
24 charge of the law on Friday morning.

25 We don't want to charge and argue too late

State versus McCall

1 because if we do we end up staying all hours of the night.
2 So as long as we have Friday, then we can show up again
3 and then you can deliberate on Friday morning after charge
4 and argument and then into the afternoon as late as you
5 need to.

6 I'm just thinking out loud right now, but I
7 wanted you to know what my expectations are. Those are
8 all subject to change. Based on what I'm hearing that's
9 my expectation as I sit here right now.

10 Y'all are welcomed to adjourned for the
11 evening. Please don't discuss the case and I'll see y'all
12 back here tomorrow morning.

13 (Jury exits courtroom.)

14 Do you have anything to put on the record
15 this afternoon?

16 MS. DRAWDY: Nothing from the State.

17 MR. ERWIN: Nothing from the defense.

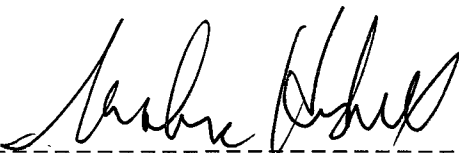
18 THE COURT: Okay. If y'all would start back
19 here tomorrow morning at 9:30.

20 (Court adjourned for the evening.)
21
22
23
24
25

State versus McCall

1 I, the undersigned Caroline Hiskell, Official
2 Court Reporter for the Thirteenth Circuit of the State of
3 South Carolina, do hereby certify that the foregoing is a
4 true, accurate, and complete transcript of record of all
5 proceedings had and evidence introduced in the trial of
6 the captioned case, relative to appeal, in Court of
7 General Sessions, Greenville County, this 13th day of
8 May, 2015.

9 I do further certify that I am neither of kin,
10 counsel, nor interest to any party hereto.

11
12
13 -----

14 Caroline Hiskell
15
16
17
18
19
20
21
22
23
24
25

State versus McCall

1 STATE OF SOUTH CAROLINA : COURT OF GENERAL SESSION

2 :
3 :
4 :
5 :
6 :
7 :
8 :
9 :
10 :
11 :
12 :
13 :
14 :
15 :
16 :
17 :
18 :
19 :
20 :
21 :
22 :
23 :
24 :
25 :

TRANSCRIPT RECORD

vs

Terry McCall

May 14, 2015 - Day 3
Greenville, South Carolina

BEFORE: The Honorable Robin Stilwell, Judge

A P P E A R A N C E S:

Sara Lee Drawdy, Esquire
Stan Overby, Esquire
Attorney for the State

Jake Erwin Esquire
Randy Chambers, Esquire
Attorney for the Defendant

Caroline Hiskell
Thirteenth Circuit Court Reporter

State versus McCall

I N D E X

WITNESSES:	DIR	CROS	REDIR
Neil Nimmons	313		
Tommy Brooks	319		
Tracy Lance	345		

E X H I B I T S

IDENTIFICATION	ID	IN EVD
State's		
43 CD	318	318
44-64 Photographs	327	
65 Disk	329	330
66-68 Photographs	335	335
69-71 Photographs	341	342
65 Disc	329	330
66 Photograph	335	335

State versus McCall

P R O C E E D I N G S

1
2 THE CLERK: All rise, court is now in
3 session, the Honorable Judge Robin Stilwell presiding.

4 THE COURT: Thank you, ladies and gentlemen,
5 take your seat.

6 First and foremost one of the jurors this
7 morning told the bailiff that yesterday during trial,
8 apparently she was sitting at the end of the jury box, and
9 were some things are counsel desk that she could have seen
10 that is if she wanted to. She decided not to look and as
11 a matter of discipline she didn't look. I just want to
12 counsel you to be careful what you got on your desk. She
13 didn't see anything but she wanted to let the bailiff know
14 that had she wanted to and had she been curious, she may
15 have been able to survey everything that you have on your
16 desk. Just be careful what you have open, okay.

17 MS. DRAWDY: Yes, thank you, Your Honor.

18 THE COURT: Okay. No worries. I know that
19 Ms. Drawdy you had something you wanted to say.

20 MS. DRAWDY: I just wanted to say if you take
21 notice of co-counsel's absence. Trooper Andis testified
22 in the pre-trial hearing regarding the admissibility of an
23 interview at the law enforcement center on the day
24 following this incident that he and Trooper Neil Nimmons
25 both attended. Trooper Andis's wife is in labor now and

State versus McCall

1 there are some difficulties so he's not going to be here.
2 Fortunately Trooper Nimmons is going to be able to carry
3 the water for us at the trial, but that has also impacted
4 subsequent testimony with a different set of photos going
5 to have to be admitted into evidence because we no longer
6 have Andis to lay the foundation for their introduction.

7 Mr. Overby, my co-counsel, is over in our
8 office getting those photos ready. He was here bright and
9 early this morning to do that, however, we have a
10 malfunction with our color printer so that is why he is
11 absent.

12 It's alright for us to begin with Mr. Overby
13 not here. We can bring our case with the Trooper Nimmons
14 and I will handle that and I just wanted to explain that.

15 THE COURT: That's fine. We can proceed
16 without him as long as you are licensed to practice law.

17 MS. DRAWDY: Thank you. And then there's
18 another matter that I have spoken Mr. Erwin about but I
19 did not have an opportunity to mention this. These are
20 exhibits that we dealt with yesterday, marked and laid a
21 foundation for their introduction and there's a question
22 as to whether they were actually moved into evidence after
23 meeting with the court reporter. And we would like to
24 move them in at this time and they would be State's
25 Exhibit 37, 38 and 39.

State versus McCall

1 THE COURT: Okay.

2 MR. ERWIN: We don't have any objection to
3 that.

4 THE COURT: Without objection, those shall be
5 moved and entered into evidence.

6 MR. ERWIN: Judge, I've got something we need
7 to talk about before we get started this morning.

8 THE COURT: Sure.

9 MR. ERWIN: I talked to Mr. McCall this
10 morning and I understand that we're going to have
11 testimony today from the MAIT investigators and I
12 understand -- again, I wasn't here or any of this stuff or
13 the first day of trial so I was kind of figuring this out
14 as I go along.

15 I understand there is some audio from an
16 interview that they conducted with Mr. McCall that in
17 pretrial was ruled admissible. Mr. McCall was telling me
18 that he has not had an opportunity to review that and he's
19 never heard it. As I'm just stand by counsel so that's
20 not really an issue for me. I trust that it be ruled
21 inadmissible. I got a pretty good idea of what's on it
22 and I know that Mr. McCall wanted me to ask you if he
23 could have a chance to listen to it today before it goes
24 in.

25 THE COURT: I don't think we'll be able to do

State versus McCall

1 that. It's 18 minutes, if I remember correctly?

2 MS. DRAWDY: Yes, Your Honor. And that's our
3 first piece of evidence from that first witness.

4 THE COURT: I don't want to wait for 20
5 minutes.

6 MS. DRAWDY: If it's any help to you, Your
7 Honor, we have four witnesses and that will end our case.

8 THE COURT: I know that you're having some
9 technical issues this morning, can you call some witnesses
10 out of order and then we'll listen to it then?

11 MS. DRAWDY: I wish I could do that for you,
12 but Mr. Overby has prepared the testimony of the second
13 witness and the third witness is a doctor from the
14 hospital who worked until after midnight last night and
15 was on-stand by and told to be here at 10:45. I do
16 apologize.

17 THE COURT: That audio is on CD is that
18 right?

19 MS. DRAWDY: Yes, it is, Your Honor.

20 THE COURT: Do you have a way of playing that
21 back, Mr. Erwin?

22 MR. ERWIN: Yes, I do have a laptop but I'd
23 have to run downstairs real quick.

24 THE COURT: You can borrow mine, I don't
25 mind.

State versus McCall

1 MR. ERWIN: We can just take it back here and
2 listen to it.

3 THE COURT: Let me say this, I don't think
4 it's actually necessary that Mr. McCall listen to it at
5 this point because I recognize it's been disclosed to
6 counsel and it's apart of discovery. However, I want to
7 make sure that Mr. McCall feels comfortable going forward,
8 has the opportunity to hear it and has the opportunity to
9 prepare for any potential cross-examination as well.

10 Initially, I've given him an added protection
11 in that regard in an effort to be absolutely fair the best
12 I can.

13 So it's 18 minutes, what I'm going to do is
14 send a message back to the jury that we've got a legal
15 matter that will take us 20 minutes, and we'll start as
16 soon as that CD finishes playing. Just come back out and
17 let me know and we'll come back in.

18 MR. ERWIN: I am so sorry, one more thing,
19 Mr. McCall at 2:00 today he needs to get his seizure
20 medication. He was telling me that yesterday he was
21 pretty close to seizing up. I think that would be really
22 bad for everybody.

23 THE COURT: Do y'all transport him back to
24 the LEC at lunch time?

25 THE DEPUTY: No. I can call over here and

State versus McCall

1 make arrangements.

2 THE COURT: Okay. Let's just see we can
3 bring it up and administer it. Thank you.

4 (Whereupon, there was a brief break.)

5 THE BAILIFF: Come to order, court is now in
6 session.

7 THE COURT: Mr. McCall, did you lose
8 Mr. Erwin?

9 DEFENDANT MCCALL: No, he stepped out.

10 THE COURT: Could you bring the jury in,
11 please.

12 (Jury enters the courtroom.)

13 Alright, ladies and gentlemen, thank you for
14 being on time today. We're starting a little bit late.
15 As you may have realized, sometimes during the conduct of
16 a trial things come up, legal issues, that I have address.
17 It's all because I have afford due process to both sides
18 to proceedings and sometimes that takes a little bit
19 longer than I anticipate and at times it comes up at
20 unexpected times and unexpected ways. So I'm sorry to
21 make you wait.

22 I try to take care of those things in the
23 morning or after y'all leave in the evening so that when
24 y'all get here, we move forward as efficiently and
25 expeditiously as possible. Sometimes we have to wait a

State versus McCall

1 little be longer than I wanted.

2 Having said that, we're ready to proceed.

3 MR. OVERBY: If it please the Court, Your
4 Honor, the State calls Trooper Neil Nimmons to the stand.

5 THE CLERK: Please come forward to be sworn.
6 Place your left hand on the Bible and raise your right.

7 NEIL NIMMONS, having been duly sworn,
8 testified as follows:

9 Thank you. You may be seated. State your
10 name for the record.

11 THE WITNESS: William Neil Nimmons.

12 DIRECT EXAMINATION

13 BY MR. OVERBY:

14 Q Good morning, Trooper Nimmons, where are you
15 employed?

16 A South Carolina Department of Public Safety,
17 highway patrol division.

18 Q And where are you assigned presently in the
19 highway patrol?

20 A Presently I'm with Troop 3, Pickens Oconee
21 County.

22 Q Where all have you worked in the highway patrol?

23 A I started out in Greenville. From Greenville I
24 transferred to Anderson. From Anderson I transferred to
25 Oconee Pickens home and then in 2009 I was assigned to the

State versus McCall

1 MAIT team, and I was with the MAIT team for four years and
2 then transferred back to Oconee Pickens.

3 Q What is the MAIT team?

4 A It's the multi disciplinarian accident
5 investigation team. Primarily we investigate the counties
6 in major cases.

7 Q In connection with these accident investigations,
8 do you interview witnesses?

9 A Yes, sir.

10 Q Do you interview individuals who are charges with
11 an offense?

12 A Yes, sir.

13 Q Do you have any play in the charging decision of
14 these individuals?

15 A No, sir.

16 Q What is the primary reason why you interview
17 these individuals?

18 A We interview everyone that's involved in the
19 crash whether it be a witness, a victim, or someone -- all
20 the drivers, all of the occupants of the vehicle, and
21 anyone that may have seen it, try to get all of the facts
22 of the case, to put them together and make a determination
23 on what exactly happened.

24 Q Are you a sworn officer?

25 A Yes, sir, I am.

State versus McCall

1 Q Do you have arrest powers?

2 A Yes, sir, I do.

3 Q Were you involved in an accident investigation
4 that occurred on March 4, 2012?

5 A I was.

6 Q Were you involved -- did you speak with the
7 driver in that particular accident, the Ford Explorer?

8 A Yes.

9 Q Is that person in the courtroom?

10 A Yes.

11 Q Would you point him out?

12 A The gentlemen at the table over there in the
13 white shirt.

14 Q Were you with another trooper at that time?

15 A I was.

16 Q What was that trooper?

17 A Trooper Andis.

18 Q Is Trooper Andis able to be here today?

19 A No, sir, he is not.

20 Q Why is that?

21 A Because his wife -- his -- he's having a child.
22 His girlfriend is having a baby, having their first child.

23 Q Where did this interview occur?

24 A It occurred at the Greenville Detention Center.

25 Q Were you there for the entire interview?

State versus McCall

1 A I was.

2 Q Did you provide him with his Miranda Warnings in
3 this case?

4 A No, sir, I did not provide that.

5 Q Who provided them?

6 A Trooper Andis provided him with Miranda. I did
7 add a little thing at the end of Miranda just to make sure
8 he knew that he could stop answering questions at any time
9 and talk to an attorney. Other than that, the actually
10 Miranda warning itself, Trooper Andis read it.

11 Q You observed him do this?

12 A Yes, sir.

13 Q Did Mr. McCall indicate whether he understood
14 those warnings?

15 A He did.

16 Q Did he indicate whether he would provide a
17 statement?

18 A He said he would.

19 Q Did you stay there for that statement?

20 A For the entire time, yes.

21 Q Was that statement audio recorded?

22 A Yes, sir, it was.

23 Q And had you had an opportunity to listen to that
24 audio recording?

25 A Yes, sir.

William Nimmons - Cross Examination

1 Q Has it been modified, changed or altered in any
2 way?

3 A No, sir.

4 Q Trooper Nimmons, did you bring a disk with you
5 into court today?

6 A I did.

7 Q Okay. I believe that has been marked as State's
8 Exhibit No. 43, has it not?

9 A Yes.

10 Q When did you receive this particular disk?

11 A I received it this morning.

12 Q Had you had opportunity to listen to its
13 contents?

14 A The entire CD.

15 Q And is it a fair and accurate copy of this audio
16 recording?

17 A Yes, sir, it is.

18 Q Has it left your possession since you received
19 it?

20 A No, sir.

21 MR. OVERBY: Your Honor, at this time, we'd
22 like to move State's Exhibit No. 43 into evidence.

23 MR. ERWIN: Subject to prior objections.

24 THE COURT: I think pretrial I don't think
25 there were any objections. I could be wrong about that,

William Nimmons - Cross Examination

1 we had a Jackson v. Denno but I don't think there were any
2 objections.

3 MR. ERWIN: Well, as you know, Judge, I
4 wasn't here.

5 THE COURT: I just wanted to make sure.

6 If there are any objections on the record in
7 that record, I respectfully deny the same.

8 (CD marked as Plaintiff's Exhibit No. 43 for
9 identification and admitted into evidence.)

10 MR. OVERBY: Your Honor, at this time I'd
11 like to publish the audio interview for the jurors.

12 (Whereupon, CD was played in open court.)

13 Thank you, Trooper Nimmons, that's all the
14 questions I have for you.

15 CROSS-EXAMINATION

16 BY MR. ERWIN:

17 Q So you were in that room when Mr. McCall is being
18 interviewed, right?

19 A Yes.

20 Q So you got a really good look at him, you were
21 sitting right across the table from him?

22 A Yes.

23 Q What was going on -- I mean he had some injuries
24 from the accident, right?

25 A Yes.

William Nimmons - Cross Examination

1 Q His teeth were messed up?

2 A Yes.

3 Q So, I guess, did it seem to you like his tooth
4 had gotten knocked out in the accident?

5 A It could have been. I wasn't there when he was
6 at the hospital so I don't know. Is it possible it got
7 knocked out direct, yes.

8 Q What's really important here is his face were
9 messed up and his teeth were messed up, right?

10 A Yes.

11 MR. ERWIN: I have no further questions.

12 THE COURT: Any redirect?

13 MR. OVERBY: No, Your Honor.

14 THE COURT: Thank you. You may step down.
15 You may be excused.

16 MR. OVERBY: At this time, the State calls
17 Corporal Tommy Brooks to the stand.

18 THE CLERK: Sir, please come up to the stand
19 to be sworn, place your left hand on the Bible and raise
20 your right.

21 TOMMY BROOKS, having been duly sworn,
22 testified as follows:

23 Thank you. Please state your name for the
24 record.

25 THE WITNESS: Tommy James Brooks.

Tommy Brooks - Direct Examination

1 THE CLERK: Thank you.

2 DIRECT EXAMINATION

3 BY MR. OVERBY:

4 Q Good morning, Corporal Books, how are you today?

5 A I'm well. Thank you.

6 Q Where are you employed, sir?

7 A I'm with the South Carolina Department of Public
8 Safety with the highway patrol division.

9 Q Where within the highway patrol are you employed?

10 A The MAIT team here in the Upstate.

11 Q He mentioned some of the duties, can you expand
12 on some of those duties as it relates to accident
13 investigation?

14 A Yes, sir. Typically what happens when a road
15 trooper comes on the scene of a collision and they have a
16 question about something, did something happen why it went
17 left of the center or was there some mechanically wrong
18 with the vehicle, then they'll notify their supervisor who
19 then in turn gets our MAIT supervisor. We respond to the
20 scene.

21 Typically, unless there's a death involved,
22 we will only send one trooper to the active collision
23 scene which means where the cars are still there and have
24 come to rest. He's start document the scene, photographs,
25 videos and also looking where the road tripper where

Tommy Brooks - Direct Examination

1 actually marked. All the evidence that they can find will
2 be marked with orange paint. The next working day that we
3 can get out there, that's where we do our forensic
4 mapping.

5 In most cases, like I said if there was a
6 death involved, we would actually do it that night.

7 When we go on the scene, we'll actually do a
8 forensic mapping of it and basically what that is what a
9 surveyor does when they go out and they're mapping points,
10 elevation points and different things, but instead of us
11 marking corners of property, we're doing evidence points.
12 The only difference is we use a data collector that has to
13 label the evidence like tire marks, skid marks, fluid
14 trails, things of that nature.

15 And typically we will map the entire roadway,
16 edges of payment, all of the lines as you see them on the
17 road and we can come up with a scale diagram, and also map
18 of the evidence that's identified. We'll actually come up
19 with a scale diagram so that you can look at it and see
20 what happened. With that we try to answer all the
21 questions that the troop may have. If something left the
22 center, which one left the center or maybe why did it go
23 off the center and things of that nature.

24 Q That sounds awfully complicated. Did you have to
25 have some special training in order to do that?

Tommy Brooks - Direct Examination

1 A Yes, sir, I did.

2 Q Talk about that a little bit.

3 A Well, I actually -- I have to keep this. There's
4 so much. There's well over 1000 hours of training, but
5 basically to be on the MAIT team you have to have what we
6 call the three core courses, which is your basic knowledge
7 for the accident reconstruction.

8 In 2001, I had the accident scene traffic
9 investigation course, which was 80 hours. December of
10 2001 I went to the advance collision investigation course
11 which was 80 hours, and then in January of 2002, I went to
12 the traffic collision reconstruction which gave me my
13 three basic core courses.

14 From 2001 up until 2008, I was what was
15 considered a MAIT associate which meant I had all the
16 skills. I was able to help the MAIT team as they came to
17 our respective counties to work on cases, but I wasn't on
18 the permanent MAIT team. I actually became a member of
19 MAIT full time in 2008. I have been there ever since.

20 Q How long is MAIT been around?

21 A It actually started when they came on the highway
22 patrol in 1996.

23 Q So they've been doing this for a while?

24 A Yes, sir.

25 Q How long have you been doing accident

Tommy Brooks - Direct Examination

1 reconstruction?

2 A Since 2001 -- actually 2002 when I finished up.
3 Once you get through with the three core courses, you're
4 allowed to go in and assist with the cases, so since 2002
5 when I was turned loose.

6 Q And could you estimate how many accidents you've
7 been involved in investigating?

8 A I wouldn't want to try.

9 Q Very well. Have you ever been qualified as an
10 expert to testify by a court?

11 A Yes, sir, I have, three different occasions in
12 general sessions.

13 Q And what have you been qualified as?

14 A In collision reconstruction in all three cases.

15 MR. OVERBY: Your Honor, at this time I
16 would offer Corporal Brooks as an expert in the field of
17 collision reconstruction.

18 THE COURT: Any objection?

19 DEFENDANT MCCALL: No objection, Your Honor.

20 THE COURT: Okay, I will so qualify him as an
21 expert in this field.

22 Ladies and gentlemen, as I stated to you
23 yesterday, somebody may be qualified as an expert because
24 of their expertise, experience, or knowledge. Just
25 because somebody is qualified as an expert witness as an

Tommy Brooks - Direct Examination

1 expert witness doesn't mean that you prefer their
2 testimony over any other piece of evidence. You can
3 consider it exactly like you consider any other piece of
4 evidence or any other testimony that you receive from any
5 other witness. That means you consider what weight it has
6 in your deliberations.

7 Go ahead, Mr. Overby.

8 BY MR. OVERBY:

9 Q Corporal Brooks, was the MAIT team assigned to an
10 accident scene investigation on March 4, 2012?

11 A They were.

12 Q Were you actively dispatched to the scene?

13 A No, sir. Since a death was not involved, they
14 actually sent one trooper out and that ended up being
15 Lance Corporal Andis.

16 Q In general for accident investigations, what is
17 the importance of that trooper being out there on the
18 scene?

19 A Well, first and foremost you have certain types
20 of evidence that will disappear over time. You have marks
21 that tires make when they begin to heat up when these
22 collisions forces apply themselves and the will actually
23 disappear. So we send a guy out to go ahead and make sure
24 that these things have been marked properly. Sometimes,
25 the road troopers they don't see it but then we go back

Tommy Brooks - Direct Examination

1 behind them and we look at what we have and we will
2 actually physically mark it if it hasn't been marked.

3 Again, some of the stuff that gets marked
4 doesn't apply to the collision but we have to mark it and
5 photograph it and mark it anyway.

6 Q So when you say mark, typically how is something
7 marked?

8 A Well, it really depends on what it is. It's like
9 say for instance if it's final rest of a car, like if the
10 Bible here was a vehicle, where it stops on the counter
11 here, if it's left rear, right rear, whatever, we're going
12 paint exactly where that tire is at, so when we go back
13 and map it we can actually put a scaled car back on the
14 same spot at its final rest and that's how we come up with
15 the final rest positions.

16 Skid marks are the same way. They are
17 actually marked and gouge marks, fluid trails and things
18 of that nature.

19 Q I'm going to ask you to step down and just a
20 minute, if you wouldn't mind, and stand to my right, sir.
21 I'm going to show you what's marked as State's Exhibit No.
22 17, okay, and it's already into evidence.

23 Do you see evidence of markings from the
24 scene itself?

25 A Yes, sir, I do.

Tommy Brooks - Direct Examination

1 Q Would you just point them out to the jury if you
2 wouldn't mind?

3 A The tire right here with the orange paint there's
4 "t" right there. Typically what happens is you put the
5 orange paint down the side of the tire and the portion
6 that comes out it forms a "t" is actually in the center
7 where the wheel is. Typically what happens is when you
8 mark these things you mark the wheels that you can
9 actually get to. Sometimes they're damaged so badly that
10 you can't mark them, you can't spread the paint on them,
11 but in this case they were able to mark the final rest of
12 this truck.

13 Q Was the same thing done on this right here?

14 A Yes, sir. And what the road troopers have done
15 here since it was so deformed, they marked the wheel here,
16 wheel here, and actually drew a line where the front of
17 the car was. They'll do that from time to time depending.
18 Sometimes they'll put a line and an arrow showing the
19 direction that it was sitting when it got there.

20 Q Do you actually recognize this vehicle?

21 A Yes, sir, I do.

22 Q Where have you seen this vehicle?

23 A I actually saw this vehicle at a wrecker service.
24 Along with my normal duties I'm actually Upstate mechanic.
25 I do vehicle inspections on cars and I'm also the tire

Tommy Brooks - Direct Examination

1 inspector for the whole state. So I was actually tasks
2 with doing a mechanical exam on this particular vehicle.

3 Q Okay. You can have a seat.

4 A Thank you.

5 Q I'm going to show you what I'd like to have
6 marked as State's Exhibit No. 44 through 64.

7 (Photographs marked as State's Exhibit Nos.
8 44 through 64 for identification.)

9 BY MR. OVERBY:

10 Q I'm showing you some items that have been marked
11 as Exhibit 44 through 64, can you tell me what those are
12 photographs of?

13 A These are actually photographs of the inactive
14 collision scene out there on 291.

15 Q Do those photographs, have you ever seen those
16 photographs before?

17 A Yes, I have.

18 Q When have you seen those photographs?

19 A I reviewed these again this morning.

20 Q And do they fairly and accurately depict the
21 accident scene as you perceived it?

22 A Yes, sir.

23 MR. OVERBY: At this time, Your Honor, I
24 request to move State's through 44 through 64 into
25 evidence.

Tommy Brooks - Direct Examination

1 THE COURT: Any objections?

2 DEFENDANT MCCALL: No objection.

3 THE COURT: Alright admitted into evidence.

4 (Photographs marked as State's Exhibit Nos 44
5 through 64 for identification were admitted into
6 evidence.)

7 BY MR. OVERBY:

8 Q You mentioned those are photographs of inactive
9 collision scene?

10 A Yes, sir.

11 Q What is an inactive scene?

12 A An inactive scene is where all the vehicles have
13 been clear away, debris has been removed and all the
14 emergency vehicles that were there responding to the wreck
15 are gone.

16 Q Now, the markings that you indicated in the other
17 photos, where are they?

18 A They're still on the pavement.

19 Q And how do you use those in your investigation?

20 A Well, once we go out and we begin our forensic
21 mapping, again we set up our station just like a surveyor
22 would. Once we begin we have a guy who is an architect
23 who is going around with the prism pole. He actually sits
24 on each point and tells the guys who are running the
25 station what this particular point is going to be whether

Tommy Brooks - Direct Examination

1 it be the beginning of a gouge mark or beginning of a tire
2 mark, lane line, edge of payment, whatever, that's what he
3 is actually doing. He's actually physically walking
4 around and sitting right there on top of the evidence
5 points and we're noting those into the data clip. So once
6 we go back and put the forensic mapping in to the
7 computer, we're able to draw a scale of what we see.

8 Q So the data collector is collecting the
9 information from the architect?

10 A That is correct.

11 Q And that is how you create a scale of diagram?

12 A Yes, sir.

13 Q Corporal Brooks, I'm handing to you what I'd like
14 to have marked State's Exhibit No. 65.

15 (Disc marked as State's Exhibit No. 65 for
16 identification.)

17 BY MR. OVERBY:

18 Q What is that, sir?

19 A That's the disk for the photographs that I viewed
20 this morning. I actually initialed that.

21 Q Okay. The photographs on this disc are they the
22 exact same ones you just reviewed?

23 A Yes, sir.

24 MR. OVERBY: Your Honor, at this time I'd
25 like to move State's Exhibit 65 into evidence.

Tommy Brooks - Direct Examination

1 DEFENDANT MCCALL: No objection.

2 (Disc marked as State's Exhibit No. 65 for
3 identification was admitted into evidence.)

4 BY MR. OVERBY:

5 Q Now, Corporal Brooks, I about 20 photographs,
6 correct?

7 A Yes, sir.

8 Q When you photograph the scene, how do you do it?

9 A It depends on the investigator that's actually
10 taking the photographs. We have our own certain beginning
11 points, but particular what happens with photographs is
12 you will take the duration that one vehicle is coming, say
13 the Ford Explorer, and you'll take photographs all the way
14 up until the area of impact and then you'll follow it from
15 the area of impact all the way to its final rest and then
16 you come back in the other direction. If it's two cars,
17 as in this case, you begin to take it from the other
18 direction so you'll have both ends of the spectrum.

19 Q Now, I'm going to ask you again to step down,
20 sir. Okay. What is this a photograph of?

21 A This is 291 and if you're familar at all with 291
22 near Cherrydale, the Spinx Station is back behind us and
23 on the right. This is actually facing northbound the
24 direction of where the pick up truck would be going. In
25 an instance where you'll see we're not directly in the

Tommy Brooks - Direct Examination

1 lane taking the photograph, the only reason we're not
2 standing in the middle of the lane is the amount of
3 traffic. We can't do that, but in this case the view that
4 you have is the direction that the pick up truck would be
5 going.

6 Q So if we were to look at State's No. 1, here,
7 which direction would this photograph be facing?

8 A This photograph is actually -- the direction of
9 travel is you're looking up this direction and you can
10 actually see where the painted media starts to close in
11 and that's right in the area of this turn right here.

12 Q Okay. What is that a photograph of?

13 A The final rest for the Ford Explorer.

14 Q Okay. Why are there only three markings here.

15 A The three marks is the damage on the Ford
16 Explorer was so severe they can only get to it and put it
17 down exactly where it was it.

18 Q I see the mark that was back there and it's on
19 the one that's on the farthest right there, what is that
20 mark?

21 A That is the left rear.

22 Q And how do you know that that's the case?

23 A Well, if you zoom in it's labeled as LR. Some
24 people put left side, LSB, but in this case left rear is
25 the driver's side rear.

Tommy Brooks - Direct Examination

1 Q What is that a photograph of?

2 A Different area of the same.

3 Q What are we looking at here?

4 A Again, what the investigator in this case and
5 like I said earlier and we map. This is Greenville county
6 so we have people that wreck all the time so we have to
7 separate the evidence as we find it. In this case what
8 he's showing me here there's actually a tire mark right
9 here that had been marked by the troopers. It's in a
10 straight line, however we still would document with
11 photographs and if we go back and map it, if it doesn't
12 match we go back to a separate later. Everything that's
13 out there we will map it.

14 There's a curve marked here along with a
15 fluid trail that actually came from the Ford Explore.

16 Q You know that based on the evidence marking
17 scenes and the information you've collected?

18 A Yes, sir.

19 Q These photographs, what are they showing you?

20 A Closing in the final rest and what we call the
21 area of impact of the two vehicles.

22 Q Moving in a little bit more. You used the word
23 gouge mark, could you just expand on that a little bit?

24 A Any mark in the pavement that's not there
25 naturally. Any kind of metal touching the ground or

Tommy Brooks - Direct Examination

1 touching the pavement or anything that it scrapes cross.

2 Q The area of impact, how much deviation is there
3 from actually point of the impact?

4 A It can be two to three feet. In this particular
5 collision this was one that we would consider an offset
6 head on and what I mean when I say offset head on is when
7 yuo think of a collision you think of two cars hitting,
8 once they move off, every car has its on set of mass which
9 is in between. Anything outside of the offset mass is an
10 offset headon. In this case where the vehicles got
11 together, that's basically what we had.

12 Q We know that whree the vehicles collided is?

13 A Right in here, yes, sir.

14 Q You mentioned the tire marks from the truck
15 earlier, is that evident in this photograph?

16 A Yes, sir.

17 Q And that's indicated by those marks there?

18 A Yes, sir and you can actually see where this one
19 stops for the left rear and the right rear continues on
20 underneath the tire.

21 Q Okay. You said that generally speaking yuo take
22 them from the point of view from the vehicle itself, point
23 of travel.

24 A Yes.

25 Q So is this essentially what thees photographs

Tommy Brooks - Direct Examination

1 show?

2 A What you clicked pass would be the actual be the
3 direction of travel for the Explorer.

4 Q This one right here?

5 A Yes, sir. Again, we can't out in the lane
6 because the traffic was so heavy.

7 Q This would be Mr. McCall's vehicle, correct?

8 A Yes.

9 Q Thank you. You can have a seat. Mark all the
10 evidence and you've looked at the scene and you mentioned
11 t he word forensic mapping.

12 A Yes, sir.

13 Q Once you've input all he data, what is created by
14 that?

15 A It's created a scale diagram. It's a color
16 drawing of the road and then it's two scale.

17 Q So the general background is 291?

18 A Yes, sir.

19 Q And it's two scale?

20 A Yes, sir.

21 MR. OVERBY: I'd like to show you what I'm
22 going to have marked as State's Exhibit No. 66 through 68.

23 (Photographs marked as State's Exhibit Nos.
24 66 through 68 for identification.)

25 BY MR. OVERBY:

Tommy Brooks - Direct Examination

1 Q What do we have there?

2 A Impact evidence that we have on the scene and
3 vehicles at final rest along with the evidence.

4 Q And this is what you created as part of your
5 investigation?

6 A Yes, sir.

7 Q Has it been altered in any way?

8 A No, sir.

9 MR. OVERBY: I'd like to move these into
10 evidence.

11 DEFENDANT MCCALL: No objection.

12 (Photographs marked as State's Exhibits No.
13 66 through 68 admitted into evidence.)

14 BY MR. OVERBY:

15 Q This is State's 66.

16 A Yes, sir.

17 Q The roadway is essentially the first diagram?

18 A That's correct.

19 Q So everything else that gets added to the diagram
20 goes on this?

21 A Yes, sir. The one that we would generate is
22 roadway which is what you see right there, a road with no
23 cars on.

24 Q What is depicted in this diagram?

25 A We're using that angles of collision off of the

Tommy Brooks - Direct Examination

1 damaged profiles of the two cars, placed them back on the
2 area of impact we're able to determine where the Ford came
3 into the pick up truck at.

4 Q I'm going to show you State's No. 14 which is the
5 Explorer?

6 A Yes, sir.

7 Q And No. 17.

8 A Yes, sir, that's the pick up truck.

9 Q You mentioned area of collision, based off the
10 Explorer, what do you see there and why is that important?

11 A If you look at it you can see how the front end
12 is pushed back towards the driver's compartment and these
13 SUV vehicles sit up just a little bit higher. In this
14 case, these trucks are extremely rigid, they're strong.
15 It just so happens that the weaker points any time you see
16 something special that are done with these trucks, they
17 are actually done broad side or dead center when they test
18 these things.

19 In this case it rode up in the softer metal
20 that was on thre and the fact that the damage is so high
21 leads me to believe from my experience, there's no braking
22 involved from the Explorer prior to it engaging in this
23 pick up truck.

24 Q These vehicle inspections, I want to show you a
25 photo of the pick up truck, State's 6, essentially you

Tommy Brooks - Direct Examination

1 notice -- does that help you notice what your opinion is?

2 A You can actually see that on the driver's side is
3 more on the -- all of this stuff is broken out. It's
4 typically induced by the collision. All of the major
5 damage, you can see the direction of the hood is actually
6 pushed. Headlight area to the side of it pushed all the
7 way down the side, side swipe offsetting head on.

8 Q So your opinion is in this photograph show you
9 where you think the area of collision is on the truck?

10 A You can see it went in right there in the
11 headlight area just pushed into the softer metal and rode
12 all the way down the side. The gouging would be right in
13 here and this would be your area of impact.

14 Q Based off that, how does the diagram reflect your
15 findings?

16 A Again, that shows the first touch of the
17 vehicles. It's not going to show maximum engagement, but
18 this is the area of impact for the vehicle.

19 Q Did you do a speed calculation in this case?

20 A No, sir. This particular case was a left the
21 center case. Sometimes you have to do a speed calculation
22 if we think that that's a sole factor in the collision.
23 In this case, the question was we had a vehicle went left
24 of center, which one did it. So we were able to go back
25 and do the forensic mapping and answer the question.

338

Tommy Brooks - Direct Examination

1 Q You've been involved in a lot of accidents,
2 correct?

3 A Yes, sir.

4 Q Were you able to estimate a range of speed?

5 A The softer metal on the cars I've seen damage
6 like that from 40 to up to high 60.

7 Q I'm going to show you State's Exhibit No. 63 what
8 is this diagram demonstrate?

9 A This is what we call the sequence of events.
10 What we do is we take a car from the direction that they
11 were initially traveling and find out which one was going
12 which direction. We line them back up on the scale
13 diagram, all the evidence that was marked and mapped
14 Again, the would be like our impact area which is the
15 first touch. We have a tire mark that leads away and you
16 can't really see. It would be like a purple color with
17 just a little line on it because you can't run the scale
18 and see it because it wouldn't fit on the paper.

19 Again, the Explorer goes through and comes to
20 its final rest is here and the pick up truck actually
21 rotated back off and came to its final rest right there.

22 Q What is State's Exhibit No. 67?

23 A That is what we call the evidence and final rest
24 layer. It's both vehicles where they stop after the
25 collision and it shows the evidence that we map. And

Tommy Brooks - Direct Examination

1 actually if you had the piece of paper, you'd be able to
2 see the gouge mark on here. It's just harder to see on
3 the projector.

4 Q Let me see if I can zoom in.

5 A You'll see it that was marked in that little oval
6 orange color.

7 Q Okay. I'm going to show you 68 again. Tell me
8 about the path of travel based off the forensic evidence
9 that you found?

10 A This case the road you saw from the photo curves
11 back to the right and typically what you see with vehicles
12 that don't have any kind of steering to it, they'll
13 continue straight to the curve. People call it
14 straightening out the curve is what we call it. If you let
15 go of the wheel the car wants to keep going forward, it
16 wants to go straight and unless you actually maneuver to
17 make it go around the curve, it's not going to do that.

18 In this case angle that we lined it up on,
19 puts it drifting over. And again with driver input if
20 something happens, an evasive maneuver that you could take
21 to move around something and you could try to get in your
22 car, don't do it on the road, do it in the parking lot, if
23 you turn your car hard back to one direction or the other,
24 you're actually going to feel your car wanting to move,
25 but you're still wanting to go straight in the direction

340

Tommy Brooks - Direct Examination

1 it your going. It will actually load up and put all the
2 weight on one corner of it either on the left or the right
3 side and it will leave a little tire mark or leave marks
4 where it's loading up because the tire heating up from all
5 the weight shift.

6 In this case, they looked at that and they
7 couldn't find anything in the other lanes.

8 Q You mentioned straightening out the curve, I'm
9 going to show you State's No. 1 and is that depicted on
10 State's No. 1.

11 A Yes, sir. This is a long sweeping curve and this
12 is you Spinx station right here but the Explorer is coming
13 in this direction and it continues to drift over into the
14 other lane.

15 Q So was there any evidence of an evasive maneuver
16 taking in this case?

17 A No, sir.

18 Q When would you find evidence of an evasive
19 maneuver? Describe what that is?

20 A If you were traveling on this road and something
21 was out in front of you or something run out in front you
22 and you're turning the wheel and sometimes you don't know
23 you're doing in. In this case, to get over to where this
24 car is you would really have to sit down on it to get it
25 over. There was no markings on the other lane. You had

Tommy Brooks - Direct Examination

1 weight shift on the other vehicle. It looked like it just
2 drifted straight over to the other lane.

3 Q It doesn't look like the Ford Explorer used
4 anything to dodge?

5 A No, sir, there was no kind of pre-breaking or
6 anything on the other car.

7 Q You also said you do vehicle inspections?

8 A Yes.

9 MR. OVERLY: I'd like to have this marked as
10 70 and 71.

11 (Photographs marked as State's Exhibit Nos.
12 69, 70 and 71 for identification.)

13 BY MR. OVERLY:

14 Q Did you have an occasion -- I'm going to show you
15 what's been marked as 69, 70 and 71. Do you recognize
16 those photographs?

17 A Yes, sir.

18 Q What do they depict?

19 A This actually depicts the work I did in my
20 mechanical exam photographs of a brake fluid resevoir in
21 the Ford Explorer and the last photograph was specifically
22 of the right rear of that same Explorer.

23 MR. OVERBY: I'd like to move State's
24 Exhibits 69, 70 and 71 into evidence.

25 THE COURT: Any objections?

342

Tommy Brooks - Direct Examination

1 DEFENDANT MCCALL: No objections.

2 (Photographs marked as State's Exhibit Nos
3 69, 70 and 71 for identification was admitted into
4 evidence.)

5 BY MR. OVERBY:

6 Q When you do vehicle inspections, did you do a
7 vehicle inspection on Mr. McCall's vehicle?

8 A Yes, sir.

9 Q What all did you inspect?

10 A For this particular instance, the defendant said
11 he didn't have any brakes and typically when we get that,
12 they're going to find me anyway to do a check, eight times
13 out of 10 there's always brakes. In this case he's 100
14 percent accurate. There was no service brakes at all on
15 the vehicle.

16 Q What did you see about the vehicle that made you
17 confirm that?

18 A The left front caliber wasn't working. The right
19 front caliber was missing, parts missing so it couldn't
20 have worked and with the brake fluid resevoir being empty.
21 What causes the drums brakes to work is fluid bust from
22 the brake fluid. Without fluid in the resevoir, nothing
23 has ever pushed those brakes cylinders out on the back to
24 push the pads out. The only brake that was functioning
25 was the parking brake, the emergency brake. You don't get

Tommy Brooks - Direct Examination

1 as much pressure out on the drum.

2 In this case the parking brakes are not
3 adequate to stop a vehicle. They are designed just to
4 hold a little bit of static pressure on the drum to keep
5 the car was moving.

6 Q I'm going to show you State's Exhibit No. 70,
7 could you tell the jury what that photo is?

8 A That is actually the resevoir for the brake fluid
9 and the booster is directly behind it.

10 Q Was there any indication that the resevoir was
11 leaking or anything?

12 A No, there was no indication that it was leaking.

13 Q And State's Exhibit No 69..

14 A That's again of a view showing inside the
15 resevoir. And this is where the fluid resevoir would be
16 and there is no indication there was ever any fluid in
17 there.

18 Q Was there any fluid in there?

19 A Not during my inspection, no.

20 Q You heard Mr. McCall's audio?

21 A Yes, sir.

22 Q And you would agree with that?

23 A Yes, sure, 100 percent there was no brakes other
24 than the park brake.

25 Q Do you see any evidence in the photograph of your

344

Tommy Brooks - Direct Examination

1 theory on that?

2 A In this case you can tell that all of the paint
3 is gone and that's from the extreme heat build up. You
4 get that if something.

5 (Due to technical difficulties, this portion
6 of the transcript can not be produced.)

7 THE COURT: Alright, we'll be in recess for
8 about 10 minutes.

9 MR. ERWIN: One thing before we bring the
10 jury back out. I mentioned that we have a witness under
11 subpoena, Ms. Juliet Martin. Mr. McCall has asked to
12 speak with her before she testifies so we can be prepared
13 a little bit. On his next break, since he's going to be
14 here so can it be arranged to have him meet her out here
15 or go back there just for a few minutes during a break.

16 THE COURT: To give him access to her, y'all
17 decide the appropriate way to do it. I defer to y'all
18 entirely on security issues so however y'all want to make
19 it happen, make it happen.

20 It is also my understanding that a nurse from
21 the detention center will be coming up at 12:30 to bring
22 the medication.

23 MR. ERWIN: Thank you.

24 DEFENDANT MCCALL: Thank you.

25 THE COURT: Bring in the jury.

Tommy Brooks - Direct Examination

1 (Jury re-enters the courtroom.)

2 You may call your next witness.

3 MS. DRAWDY: The State calls Dr. Tracey
4 Lance.

5 THE CLERK: Would you please come forward to
6 be sworn in. Place your left hand on the Bible and raise
7 your right.

8 TRACEY LANCE, having been duly sworn,
9 testified as follows:

10 Thank you. You may be seated. Would you
11 please state your name for the record.

12 THE WITNESS: Tracey Lance.

13 DIRECT EXAMINATION

14 BY MS. DRAWDY:

15 Q Dr. Lance, are you employed with the Greenville
16 Hospital System?

17 A Yes.

18 Q What is your capacity?

19 A I'm an emergency room attending.

20 Q Attending what?

21 A Seeing patients and we have residents that we
22 also teach and the ones that are already have are the
23 attendings.

24 Q So you have your medical degree?

25 A Yes.

346

Tommy Brooks - Direct Examination

1 Q Where did you take your medical degree?

2 A Saint Vincent's Hospital in Cleveland, Ohio.

3 Q When did you receive your medical degree?

4 A 1996.

5 Q Since that time where have you practiced and what
6 type of medicine?

7 A Emergency medicine and I practice at the
8 Greenville Health System.

9 Q And are your board certified?

10 A Yes.

11 Q By who?

12 A American Board of Emergency Medicine.

13 Q Briefly give us a little bit more about your
14 education and experience.

15 A After medical school, I spent a year in Kentucky
16 doing an internship because I didn't know exactly what
17 field I wanted to go into. Once I decide I spent three
18 more years in Dayton Ohio doing a residency in emergency
19 medicine. I took my boards, passed and been practicing
20 ever since.

21 Q And how long have you been practicing in
22 emergency medical total?

23 A 19 years.

24 Q How many years with the Greenville Hospital
25 System?

Tommy Brooks - Direct Examination

1 A I was here for three years, left for 11 years and
2 I've been back since 2010.

3 Q As part of your training did you have to learn
4 about the properties of prescription drugs and the effects
5 on the human body?

6 A Yes.

7 Q And do you regularly prescribe prescription
8 drugs?

9 A Yes.

10 Q Is that why you need to know about that?

11 A Yes.

12 Q Were you also trained in the effects of illicit
13 drugs on the human body?

14 A Yes.

15 Q Why do you need to know about that?

16 A There are certain medications that we can give a
17 patient that may interact with illicit drugs and we have
18 know how they interact.

19 Q Are you familiar with the impairing effects of
20 prescription drugs?

21 A Yes.

22 Q Are you familiar with the impairing effects of
23 illicit drugs?

24 A Yes.

25 Q What is a typical shift where you are working now

348

Tommy Brooks - Direct Examination

1 at Greenville Memorial?

2 A We work 36 hours a week and that can be spread
3 out anywhere from 8 to 12 hour shifts.

4 Q And that's year in and year out?

5 A Yes.

6 MS. DRAWDY: Your Honor, we'd like to qualify
7 Dr. Lance as an expert in the areas of the practice of
8 medicine and specifically emergency medicine and the
9 pharmacological properties of prescriptin drugs and
10 illegal drugs.

11 THE COURT: Any objection.

12 DEFENDANT MCCALL: No objection.

13 THE COURT: She is so qualified.

14 BY MS. DRAWDY.

15 Q Were you employed by GHS on March 4, 2012?

16 A Yes.

17 Q You were working in the ER?

18 A Yes, I was.

19 I'm going to show you what's Exhibit E and ask you if
20 you could identify what that is?

21 A This is our emergency department record.

22 Q And who is the patient?

23 A Terry McCall.

24 Q For what date?

25 A March 4, 2012.

Tommy Brooks - Direct Examination

1 Q Is that a record that you have made input into?

2 A Yes.

3 Q Why is that?

4 A This is our emergency department record where
5 everything we do for them is placed through the computer.

6 Q And what was your capacity that evening with
7 regard to Mr. McCall?

8 A I was his attending physician.

9 Q So you performed an examination on him?

10 A Yes.

11 Q Can you tell when he arrived?

12 A He was greeted at 19:00.

13 Q At that time what is first done with the patient?

14 A The nurse greets the patient in their triage into
15 the emergency department.

16 Q Is there any information obtained from the
17 patient at that point?

18 A Yes, the nurse actually obtains a history of
19 present illness also.

20 Q Is that something you review before you examine
21 the patient?

22 A Most of the time, yes.

23 Q And what on this particular occasion were the
24 complaints that Mr. McCall expressed?

25 A He was complaining of chest and abdominal pain,

350

Tommy Brooks - Direct Examination

1 chest wall pain that increased with movement and
2 inspiration, and mouth pain.

3 Q Did he complain of any type of head injury?

4 A No.

5 Q Did he complain of any type of seizure at that
6 point?

7 A No.

8 Q Did he say anything about having loss
9 consciousness?

10 A Yes, he said he denied loss of consciousness.

11 Q After that is done, are vital signs taken?

12 A Yes.

13 Q They were taken that night?

14 A Yes.

15 Q 19:00 he was in the ER at that point?

16 A Yes.

17 Q Was he asked if he loss consciousness?

18 A I think he was because he denied it.

19 Q So is he also asked if he had a past medical
20 history?

21 A Yes.

22 Q What did he state his past medical history?

23 A Hypglycemia.

24 Q What is that?

25 A Low blood sugar.

Tommy Brooks - Direct Examination

1 Q Mr. McCall says that's his past history, the low
2 blood sugar. Did he claim any other history?

3 A Medical history, no.

4 Q Was he asked about surgical history, social
5 history?

6 A Yes.

7 Q I'm not asking you about all of that but is he
8 the source of this early information?

9 A Yes.

10 Q Do you also ask about family history?

11 A Yes.

12 Q And the patient himself is the source of this
13 information?

14 A Correct.

15 Q Did he tell you what his current medications
16 were?

17 A Yes.

18 Q What did he tell you?

19 A Loritab.

20 Q Something that he is currently taking or
21 prescribed for him?

22 A Yes.

23 Q What is Loritab?

24 A It's a narcotic mixture codiene and tylenol.

25 Q That's given for what?

352

Tommy Brooks - Direct Examination

1 A Pain.

2 Q What sort of effects does that have on the body?

3 A It slows your body down, all of your reflects,
4 anything you think of you become slower at.

5 Q Now, at some point did he discuss the accident
6 with you?

7 A Yes.

8 Q Did you note of what he said?

9 A Yes.

10 Q What did he say?

11 A He said he was involved in an accident, he was
12 the driver and it was headon and the steering wheel was
13 actually in is lap. It happened just prior to coming to
14 the emergency department

15 Q Did you check on his neurological condition?

16 A Yes.

17 Q What did you find?

18 A On my physical exam I found that he had no motor
19 or sensory deficits. His speech was very slow but
20 appropriate.

21 Q Let's look at your physical exam. If you'll
22 refer to the notes on Page 2. Did he make a statement
23 about what he thinks may have made him cross the center
24 line?

25 A Yes.

Tommy Brooks - Direct Examination

1 Q What does he think?

2 A He thought his blood sugar may have been low and
3 made him cross the center line.

4 Q Did you order a lab test to check his blood
5 sugar?

6 A Yes.

7 Q Can you refer to the record and tell us what that
8 was?

9 A 96.

10 Q And tell me what a blood sugar level of 96?

11 A That's not a low blood sugar, that's a normal
12 blood sugar.

13 Q Did you go on to conduct a physical exam of
14 Mr. McCall, if you would review your notes and tell us
15 what you discovered starting with the head?

16 A His head was a-traumatic, it looked normal. His
17 pupils are equal, his (inaudible) where you look up down
18 and sideways was all normal. He did have his left lower
19 midline boney cervical tenderness and muscular gender as
20 bilaterally. His chest was tender anteriorly. It hurt
21 when you push on it and his breasts sounds were decreased
22 bilaterally, on both sides. His heart was regular. He
23 did have some diffuse tenderness in his abdomen which was
24 mild and seemed to be worse in the upper part of the
25 abdomen. His back exam was normal, no tenderness. That

Tommy Brooks - Direct Examination

1 doesn't include the neck. He has a skin tear to this part
2 of his hand. On his legs, his left fourth toe was
3 bruised.

4 The rest of his skin exam was normal and he
5 was alert and oriented.

6 Q Did you see any evidence to indicate that he had
7 suffered a concussion from the accident?

8 A No.

9 Q And what would you normally look for that you did
10 not see?

11 A Disoriented and say repetitive things, ask you the
12 same question over and over again.

13 Q Did he have any head trauma?

14 A No.

15 Q Did you look for it?

16 A Yes.

17 Q Did you see any evidence of a recent seizure
18 having been suffered by Mr. McCall?

19 A No.

20 Q What would you have expected to see you did not
21 see?

22 A When people have a seizure, they will regularly
23 bite their tongue so you will see bite marks on the
24 tongue. They may or maynot be incontinent, he was not
25 incontinent. Sometimes they will come in confused and

Tommy Brooks - Direct Examination

1 will not remember what happened. That was not the case.

2 Q So he told you he had been in a motor vehicle
3 accident?

4 A Yes.

5 Q And you did not see confusion to the level that
6 you would have considered him to have possible have a
7 seizure?

8 A No.

9 Q If he had a seizure in the last couple of hours,
10 he would have seen those things you just talked about?

11 A Yes.

12 Q And you did not?

13 A No.

14 Q Let me ask you if you'd ordered any other blood
15 work?

16 A Yes.

17 Q What other blood lab test did you order?

18 A I ordered a CVC blood screen and alcohol level
19 screen and urine drug screen.

20 Q Why would you do that?

21 A This was a significant accident and he could have
22 had some significant injuries and as a screening measure
23 we order those just in case there is something wrong with
24 him and he has to be admitted to the trauma service.

25 Q Why would being admitted to the trauma service

Tommy Brooks - Direct Examination

1 make it important to know what he had in his system?

2 A They routinely give specific medications for pain
3 and sedation and they have to know if there's something in
4 his system that could interact with what they're going to
5 give him. They could make him worse if they don't know.

6 Q So that's why you ordered that?

7 A Yes.

8 Q Can you tell what time samples were taken for the
9 blood and urine for the purpose of those tests?

10 A The labs were drawn at 19:15.

11 Q Is that both?

12 A The urine was collected at 20:45.

13 Q And what was the blood sample used to test?

14 A The blood was used to test the CBC, the alcohol
15 level.

16 Q Was there any alcohol in his system to the extent
17 that it would have been medically significant?

18 A No.

19 Q So there was none?

20 A No.

21 Q Was the urine screen show any substances that
22 would have been medically significant and of interest to
23 you?

24 A Yes.

25 Q What were those substances?

Tommy Brooks - Direct Examination

1 A His blood screen was positive for amphetamines,
2 benozodiazpines, cocaine, marijuana and opioids.

3 DEFENDANT MCCALL: Objection, Your Honor.

4 THE COURT: Thank you. I overrule the
5 objection.

6 BY MS. DRAWDY:

7 Q Is methamphetamine and amphetamine?

8 A Yes.

9 Q Tell us what they do to the body?

10 A They speed you up that's why they call it speed
11 in the general public, heart rate, make you go really fast
12 and not think the way you should think because everything
13 is going to fast to think appropriately.

14 Q What would some of the psychological facts it
15 would have on the body a person could observe if you gave
16 a physical examination, such as their eyes?

17 A They would hold their eyes open wide, their
18 pupils may be bigger than normal.

19 Q Dilated?

20 A Yes. They may look around really quickly fast.
21 They would not necessarily be able to sit still.

22 Q What is a normal range of pupil size if you re
23 not under the influence of any type of drug?

24 A Normal is 2 or 3 millimeters.

25 Q If a pupil size was 6 millimeters could that be

Tommy Brooks - Direct Examination

1 under the influence of methamphetamine?

2 A Yes.

3 Q Did you actually examine those pupil size?

4 A No, they were reactive. Let me look at my notes.
5 Not the size just that they were equal bilaterally.

6 Q What was the next thing that was found in the
7 urine screen?

8 A Benzodiazapine.

9 Q What are the effects of those drugs?

10 A Those are drugs that we use for anxiety. They
11 calm them down.

12 Q So much the opposite effect?

13 A Yes.

14 (Due to the technical difficulties, this
15 portion of the transcript can not be produce.)

16 THE COURT: Alright, ladies and
17 gentlemen, you have seen all of the evidence that will be
18 presented in this case. We will proceed to argue and
19 charge. We will do that in a few minutes. We need to
20 have a very short charging conference with the attorneys
21 and talk to them about exactly what it is that I'm going
22 to charge so they will be able to fashion their closing
23 arguments to the law that will be charged.

24 So what I anticipate I'm going to ask the
25 attorenys to argue as expeditiously as possible no more

Tommy Brooks - Direct Examination

1 than half an hour a piece. They may go less or a little
2 bit more but that's the guidance that I'm going to give
3 them and my charge will probably take somewhere around 20
4 minutes. If I am guess right, you will get this case and
5 you may deliberations around 4:00. That's my hope.

6 When you begin your deliberations, you will
7 take you as long as it will take you to come to a
8 decision. It can take you a significant amount of time,
9 it can take you a little amount of time. It's entirely up
10 to you because you at that point will be the deliberating
11 persons to determine what the facts are.

12 So what I will tell you if I can't give you
13 any specific guidance on when you will be out this
14 afternoon, but I will suggest to you that you probably
15 Will need to plan to be here at least past 5:00 and then
16 beyond you, it's going to be entirely up to you.

17 If you need to make arrangements, I'll let
18 you use your phone at this period of time and say this is
19 my best guest this point. The reason I've given you all
20 of this information is that you can make a best guess.

21 Please don't discuss the case.

22 (Jury exits the courtroom.)

23 Any motions?

24 MR. ERWIN: Yes, sir, I have a couple of
25 things. The first one I would like to renew my directed

360

Tommy Brooks - Direct Examination

1 verdict motion and renew all of the objections that have
2 been made in this trial by Mr. Chambers, Mr. McCall and
3 myself as a team. I'd like all of those objections to be
4 renewed.

5 THE COURT: Yes, sir.

6 MR. ERWIN: Secondly, and I know the answer
7 to this for the record I'd like to officially move for a
8 mistrial based on the representation situation that we've
9 been dealing with over the last couple of days. I do
10 think it has prejudiced the client unduly and I would ask
11 the Court to consider granting a mistrial at this point
12 based on that.

13 THE COURT: The ruling with regard about all
14 of the prior motions remain. With respect to the
15 mistrial, I will respectfully deny the same and I stated
16 this before and I know Mr. McCall took some exception to
17 it and it's not directed to you personally, it's just the
18 fact of the matter as I see it, all of the problems that
19 have risen in this case is with regard to the defendant's
20 counsel and his representation and consequence of his own
21 decisions, therefore, I respectfully deny the request for
22 a mistrial.

23 MR. ERWIN: Thank you, Your Honor.

24 THE COURT: Anything further?

25 MR. OVERBY: No, Your Honor.

Tommy Brooks - Direct Examination

1 THE COURT: It is my understanding that there
2 were no specific requests for charges which is fine. Do
3 you have any, sir?

4 MR. ERWIN: I don't know if you have a
5 standard charge as far as him representing himself. I
6 know that you mentioned that to the jury when I came in
7 that they wre not to hold that against him. I would ask
8 that maybe a quick nodd to that at some point in the
9 charge.

10 THE COURT: Okay. I will.

11 MS. DRAWDY: And the State would suggest that
12 because the indictment itself only alleges that he was
13 under the influence of drugs and the evidence is clear
14 that alcohol is not a factor in this case, that all of the
15 usual charges related to alcohol be admitted.

16 THE COURT: I think that I've taken all those
17 out. Now, I may slip up and say alcohol so to the extent
18 that I may say it, I'll try to correct it. If I don't
19 remind me after the fact and I will change it.

20 I will charge reasonable doubt, I'll define
21 reasonable doubt, I will not define it as the type of
22 doubt that would cause a reasonable person to hesitate to
23 act, rather I will charge the firmly convinced language.
24 You can fashion your arguments to that definition.

25 Otherwise, it's a fairly simple charge. I

362

Tommy Brooks - Direct Examination

1 will give you a copy and let you take a look at a copy of
2 your verdict form as standard as can be.

3 MS.** : Your Honor, may I inquire as to
4 whether you considered this to be general intent or it
5 requires criminal intent?

6 THE COURT: In as much as intent in this
7 action hadn't been an issue in the case, I'm not going to
8 define it specifically unless you give me your request
9 with regard to intent. I can. What I find in a case like
10 this, it's better to charge the law and let them make
11 determination because when you start defining too much it,
12 for lack of a better term, muddys up the charge.

13 MS. DRAWDY: I just didn't think he had to
14 have the intention to commit a crime.

15 THE COURT: I agree with that.

16 Alright, does the State waive opening?

17 MS. DRAWDY: The State waives opening, Your
18 Honor.

19 THE COURT: Do we think we can confine
20 ourself to 30 minutes or less?

21 MR. ERWIN: No problem, Your Honor.

22 MS. DRAWDY: I usually go 15 minutes.

23 THE COURT: I was going to say 20 is probably
24 right but I was going to give you some latitude in your
25 argument. We'll say as ladies and gentlemen, 20 minutes

Tommy Brooks - Direct Examination

1 tops?

2 MR. ERWIN: I don't see that being a problem,
3 Your Honor.

4 THE COURT: Okay. If you would put Dr. Jones
5 in the foreperson's seat, please.

6 (Jury re-enters the courtroom.)

7 Alright, Dr. Jones, congratulations to you,
8 sir, you have demonstrated yourself to be such an
9 exceptional juror, you've been appointed as foreman of the
10 juror.

11 Now, your role as a juror is fairly
12 ill-defined. What you must do as foreman of the jury is
13 assure that everybody in the jury has a voice, that
14 everybody has the opportunity to be heard in your
15 deliberations. Sometimes when 12 people go into a room
16 and begin deliberations, you're going to have some very
17 loud voices and some people aren't necessary as loud, but
18 it's your job as every opportunity to have input in
19 deliberations.

20 Beyond that I can't tell you what a foreman
21 does because I've never been on a jury and it's illegal
22 for me to even come in to your jury room while you
23 deliberate. So I don't know what you do. So beyond that
24 I can't tell you how the organize the deliberation or
25 manor or method, all I can tell you is good luck. Make

Tommy Brooks - Direct Examination

1 sure everybody has an opportunity to be heard.

2 Okay, ladies and gentlemen, we're going to
3 proceed with closing arguments. As I told you at the
4 beginning of the trial, arguments are not evidence.
5 Evidence, all the evidence has already been presented.
6 Arguments are simply advocacy by the perspective attorneys
7 trying to persuade you to their perspective sides.

8 The attorneys, although, I told you they take
9 about 30 minutes a piece, they have charitable and
10 considerable just told me that they will take 20 minutes or
11 less. So if they hit the 20 minutes, start giving them
12 the evil eye because that's the representation they made
13 to me.

14 I will defer to defense counsel, Mr. Erwin
15 for his closing.

16 MR. ERWIN: Thank you, Your Honor. Good
17 afternoon. Give me just one second. So as has been
18 explained to y'all a couple of times, maybe, I'm not
19 actually Mr. McCall's lawyer. He's representing himself
20 in this trial. Judge asked me to come in and help where I
21 could so that we can make sure no rules are broken and
22 we've made it to the end.

23 Mr. McCall asked if I could do the closing
24 for him because these are all his ideas but he's asked me
25 to talk for him because this is what I do and you'll hear

Tommy Brooks - Direct Examination

1 it a little bit better coming from me.

2 Let's talk a little bit about Mr. McCall
3 because that's what this trial is about. I've spent some
4 time with him over the last few days. You may have seen
5 us sitting over here fussing at each other a little bit
6 and you guys actually known him for longer than I have
7 because you were here for the whole first day. I'll say
8 this, you'll probably tell he's a strange dude. There's
9 really no way around that.

10 You guys have seen our relationship. He
11 fired his lawyer in the middle of a trial. He's driving
12 around in a car that by his own admission has basically no
13 brakes. You met his girlfriend earlier today,
14 ex-girlfriend earlier today, they certainly seem to have
15 an interesting relationship. We know one thing that is
16 absolutely true, he is not high right now.

17 I asked him questions when he was up here and
18 he's been held in jail during the duration of this trial
19 so we know that he has not had access to any drugs at all.
20 Yet, here we are. This is the man. I know he's probably
21 pretty mad at me right now, but this is a DUI case. He is
22 charged with driving under the influence. He's charged
23 with driving while impaired and there's no doubt in my
24 mind that the reason he got charged with that is because
25 he's a weird dude.

366

Tommy Brooks - Direct Examination

1 Everybody who came into contact with him
2 after that accident, the paramedics, the doctors, law
3 enforcement folks, all commented on the way he was
4 speaking, the way he was acting, and it was a little off,
5 a little strange. I put it to you that that's just the
6 way he is and I think that you guys seen enough of that in
7 the courtroom this week.

8 Now, that does not excuse his behavior the
9 day of the accident. There is also no doubt in my mind
10 that this accident was his fault. He's driving around in
11 a car that doesn't have brakes. He's apparently has an
12 onset of a seizure coming on yet decides to continue
13 driving. These are all reckless acts. These are all
14 negligent acts. These are things that you can get
15 punished for in a lot of different ways.

16 There are crimes that behavior would fall
17 under. There are civil remedies that the victims could
18 take against him based on that behavior and there's no
19 doubt in my mind he would be in the wrong as far as all of
20 those go. But that's not what your job today is about.
21 Your job today is to decide very simply was he impaired
22 while he was driving. Was he impaired because of drugs?
23 Right? So he admitted that he took some drugs the day
24 before and that was in his system. There's no way around
25 that.

Tommy Brooks - Direct Examination

1 Frankly, there's drugs in his system. He
2 tested positive for drugs. That does not mean that he was
3 impaired by those drugs. We heard from the toxicologist
4 up here yesterday afternoon. It depends, it varies,
5 there's a lot of different ways that the effects of a drug
6 can be changed based on the context in which those drugs
7 are taken.

8 How long ago was it? How much of a drug user
9 are you? Just the fact that he had drugs in his drug
10 stream does not mean that he was high. I'll admit the
11 audio tape that we heard earlier today of him talking to
12 law enforcement, he sounded pretty goofy on that tape, but
13 again, this is the guy we're talking about.

14 Keep in mind that he was just in a really
15 serious car accident and it was his fault but he was in an
16 accident and his teeth were broken and very possibly in
17 shock. His behavior on that day does not prove beyond a
18 reasonable doubt that he was impaired. No one has been
19 able to do that for you yet.

20 I'd say that the closest we got this week,
21 the closest the State got beyond a reasonable doubt that
22 he was impaired on that day and was the toxicologist we
23 heard from yesterday and the doctor we heard from this
24 morning that both said it's probably true that if those
25 drugs are in his blood system that he was probably high

368

Tommy Brooks - Direct Examination

1 and, you know, their testimony was from professionals,
2 scientists, trained and educated and know what they're
3 doing and they want you to understand that what they're
4 saying is precise and it's measured and they don't make
5 mistakes and this is dead on solid, correct information.

6 I'm not saying that it isn't. I know they
7 did not have the context of what happened. They don't
8 know Mr. McCall and they all said this is the first time
9 that they had seen him. I couldn't help but notice going
10 through this evidence the medical report here State's
11 Exhibit E, like I said the doctors and the scientists that
12 testified they want you to believe they are not mistakes
13 made and they want you to think that what they're talking
14 about, but people make mistakes. People are people.

15 On Page 6 of 7 on this medical report that
16 was created by a whole team of medical professionals who
17 are educated, who are trained and who are smart folks who
18 are doing their job, on Page 6 of this medical record, it
19 says, "Labs drawn at time of placement on this less than
20 three year old patient." In the medical records it says
21 he's less than three years old, that's not true. It's a
22 mistake. I don't know if they have a form that they fill
23 out and it spit out the wrong number, who knows? I'm just
24 saying that as trained and as education and as
25 professional these folks are, it is still within the realm

State versus McCall

1 of possibility that they don't have complete control of
2 everything.

3 One thing I know they don't have complete
4 control over is this strange dude sitting over here. So
5 when you go back in the jury room, please, please, I want
6 to make this as simple as possible there's one issue in
7 this case and that is was he impaired that day? Do you
8 know beyond a reasonable doubt that he was impaired that
9 day or was he just being a reckless, negligent, weird
10 dude? Please take the time to think about and I think you
11 should find him not guilty and I would ask that you
12 consider that while you're back there.

13 Good luck to you all.

14 MS. DRAWDY: If it please the Court.

15 THE COURT: Yes, ma'am.

16 MS. DRAWDY*: Ladies and gentlemen,
17 Mr. McCall is sitting there not guilty right now.
18 Mr. Erwin is right and it doesn't matter whether I think
19 he's guilty or Mr. Erwin thinks he's not guilty. It
20 matters what you decide in the course of your
21 deliberations based on the evidence that's been provided
22 to you.

23 The Judge is going to charge you that when
24 you are considering testimonial evidence, that means a
25 witness is telling you something. You can chose to

State versus McCall

1 believe all of what someone is telling or none of what
2 someone says or part of what they say and not so much the
3 other part.

4 In doing so, you take into account their
5 ability to observe a fact, their ability to recall
6 something, their bias, their reason to be truth and their
7 reason to be untruthful. In addition to that, you measure
8 that testimony in light of the other things that you know,
9 things like blood sugars. The same blood sugar level that
10 was observed at the hospital that the doctor told you was
11 normal is what was observed in the ambulance. Both wrong?
12 I don't think so. It's consistent.

13 I think if you look at the witnesses who
14 testified for the State, you will find that these are
15 people who were doing the best they could. They were
16 doing their job. They were meeting their
17 responsibilities. It makes you feel pretty good about
18 living in Greenville County. Another thing that makes you
19 feel good about living in Greenville County is that the
20 mass majority of us are responsible. We hold ourselves
21 accounting for maintaining our automobiles, for not
22 getting on the road in a condition in an impaired
23 condition that could endanger others.

24 It's not a defense that you're weird. That
25 does not give you a license to be irresponsible and it is

State versus McCall

1 not a mask for impairment. How do we know he was impaired
2 at the time, the dilated eyes 6 millimeters. The doctor
3 said that's a sign of being under the influence of
4 methamphetamine. He had dilation 6 millimeters.

5 We also have very good evidence from the
6 toxicologist of what was in his blood stream. We have how
7 he looked. This is not acting weird. This is a
8 photograph of a man who appears to be impaired. That's
9 something we can all appreciate and that's something we
10 can see when we look at this picture, which is what's on
11 the outside. And that's what police officers have to go
12 on. They said, there is something definitely not right
13 about this man. It was not only the things he said but
14 his condition.

15 But I'll tell you we have another photograph.
16 That's this one, the blood and the urine. Now, we can't
17 look at this and make any conclusions based on it but the
18 SLED toxicologist can look into this and give us an
19 insight as to what was going on and that insight was
20 methamphetamin and Ativan, the very things that the
21 defendant admitted in his own statement to the police very
22 close in time, the very next day, that he had taken four
23 Ativan.

24 Now, the methamphetamine he never admitted,
25 he never said. The defendant's girlfriend said that she

372

State versus McCall

1 did not see him ingest methamphetamine the day before the
2 accident up until about eight hours before the accident.
3 She wasn't with him the whole time, and the toxicologist
4 tell tell you the window was 10 hours. He had a 10 hour
5 window in which to ingest that and she wasn't with him the
6 whole time and she was asleep most of that time.

7 We started out with a blank sheet and I could
8 go on and suggest to you things that you should consider,
9 but you have it all, you have it all. We had a burden to
10 provide you with as much information as we could and you
11 use your good judgment to determine whether or not you
12 think a minor mistake on something makes everything else
13 wrong.

14 You judge the caliber of the witnesses who
15 testified for the State, their information at the time,
16 that they observed all these things and did all these
17 things, it was for accuracy. It was for saving lives. It
18 was for accurately documenting what was in a scene. The
19 little details that were presented are documented because
20 those are things you can't remember.

21 I'm asking you to focus on the State's case
22 and decide whether or not the State painted a picture that
23 proves to you this man was very impaired on that day.
24 There is simply no explanation for him going across a road
25 other than that. Every other excuse that has been

State versus McCall

1 suggested to you is just that, an excuse. Mr. McCall is
2 not only weird but he is a man who can not bring himself
3 to hold himself accountable for the things that he does.
4 Nothing is his fault or responsibility.

5 I leave you with thought, the suggestion was
6 made that the victims could have sued him. Well, the
7 victims did not bring these charges. The State of South
8 brought these charges on behalf of the people of South
9 Carolina who drive on the roads. That's who brought this
10 case and that's what this is about.

11 This has been a big burden and at this point
12 it's being transferred to you to determine what you are
13 confirmly convinced of what the facts are in this case.

14 THE COURT: Alright, ladies and gentlemen,
15 it's time for me to give you the law. Let me start out by
16 saying you recognize, of course, that during the course of
17 this trial that Mr. McCall changed attorneys. Now, that's
18 not relevant to your determination in this case. You
19 can't hold that against him. In the State of South
20 Carolina and the United States of America, a person has a
21 right to have counsel represent him or her, and that
22 person also has a right to proceed on his or her own. But
23 the long and short of it is ultimately that's not relevant
24 to your consideration.

25 What you are here to do is determine whether

State versus McCall

1 the State has met its burden of proof and has proven all
2 of the elements of the offense beyond a reasonable doubt.

3 Now, when we began this case I told you that
4 you have roles and I have a role and my role is to be the
5 judge of the law. I'm going to charge you on the law with
6 regard to the evidence you've heard in this case. Now, if
7 you've come into this courtroom with any predisposition or
8 any prior notion of what you think the law is or what you
9 think the law should be and I would charge you of disabuse
10 yourselves of that because under your oath you swore to
11 accept the law as I give it to you.

12 Now, of course, your role is to be the judge
13 of the facts. You will determine what the facts are based
14 on your analysis of the evidence that has been presented
15 in this case. You will look at all of the evidence in its
16 totality and determine whether the State has met its
17 burden of proof. You will look at everything that's been
18 submitted and decide what has weight and what doesn't have
19 weight. You'll determine what type of relevant weight it
20 has, that is you'll determine what's important or not.

21 You'll also look at witnesses and you'll
22 determine whether they are credible or not. Also
23 understand that you can look at a witness's testimony and
24 determine only a portion of it was credible and discard
25 the rest or you may determine that all of it was credible

State versus McCall

1 or all of it was conversely not credible. My point is
2 it's entirely up to you what you take away from a
3 witness's testimony.

4 From your own common sense you know how to
5 judge credibility. You know that by looking at someone
6 seeing their facial expressions, seeing their body
7 language, recognizing whether they have something to gain
8 or lose from their testimony, whether someone is credible
9 or not. You would apply your common sense to determine
10 the credibility of witnesses. Also know that as you saw
11 and as I charged you during the conduct of the case you
12 heard testimony from expert witnesses.

13 You don't value their testimony any more
14 highly than you do any other witness's testimony. You
15 consider that evidence in the same context as any other
16 piece of evidence that you may receive in the case.

17 Now, go back to what I told you when we first
18 started qualification or selection of jury in this case,
19 Mr. McCall is presumed innocent until such time as
20 deliberating jurors determine that the State has met its
21 burden of proving each and every element of the offense
22 that he is charged with beyond a reasonable doubt. He
23 maintains that presumption of innocence until you make
24 that determination.

25 Now, as he sits here right now in front of

State versus McCall

1 you, he is presumed innocent. He wears that cloak of
2 innocence and you will in fact determine whether the State
3 has met it's burden of proof.

4 Now, we thrown about this term reasonable
5 doubt and it does beg the question what exactly is it. In
6 a lot of different court settings there are different
7 standards of proof. If you been in a civil trial you may
8 have heard a standard of proof which is called
9 preponderance of the evience which is a greater weight or
10 more likely or not or if you've heard the most recent
11 court about Tom Bradey, you may have heard that as well.
12 That's more likely than not a probability.

13 There's a different standard of proof for
14 things such as fraud or or punitive damages and that would
15 be clear and convincing evidence which is higher than
16 preponderance of the evidence. But in criminal trial the
17 standard of proof is beyond a reasonable doubt.

18 Now, proof beyond a reasonable doubt is proof
19 that leaves you firmly convinced of the defendant's
20 guilty. Now, there are very few things in this world that
21 you can know with absolute certainty and the law does not
22 require that the State proves it's case beyond any
23 possible doubt. However, do understand that in your
24 deliberatioons that you determine there is a real
25 possibility that the defendant is innocent, then under

State versus McCall

1 your oath you would find him not guilty of the offense.

2 Now, ladies and gentlemen, I'm going to
3 reading a little bit of this and sometimes when I get
4 precise definitions, it's incumbent upon me to read because
5 this is an important case for the defendant and for the
6 State. It's an important case for you as well. You spend
7 a little bit of time on it so I apologize I'll read a
8 little bit.

9 Ordinarily evidence is presented in the
10 courtroom comes in one of two different forms either
11 direct evidence or circumstantial evidence. Direct
12 evidence is evidence that immediately proving a fact to be
13 proven. Circumstantial evidence by contrast is a proof of
14 a chain of facts or chain of events which in combination
15 and in the aggregate proves the main fact to be proven.

16 Now, that's a fairly simple definition but
17 I'm going to give you an example which may help you
18 conceptualize it a little bit better. Let's say on a
19 January evening you're going to bed and you walk past your
20 front door or your front window and you look out on your
21 front lawn or the parking lot and you see that there's no
22 precipitation on the ground. The next morning you walk pass
23 that very same window or door and you see there's a
24 blanket of snow on the ground. You also see in that snow,
25 footsteps which lead to your front door and then lead

State versus McCall

1 away.

2 In that set of circumstances you got direct
3 evidence its snowed that night. You can touch it, feel
4 it, taste it, it's there. You also have circumstantial
5 evidence that someone either late that night or early that
6 morning walked to that door and walked away. Now, you
7 can't see that person, touch him or smell, but you know
8 the consequences of the timing of the falling of the snow
9 and the footprints in the snow leading to your door and
10 then walking away, that's circumstantial evidence.

11 Ladies and gentlemen, I will tell you that
12 the law does not prefer direct evidence over
13 circumstantial evidence. Again, just like with any other
14 piece of evidence you apply whatever weight that you think
15 is appropriate to either direct evidence or circumstantial
16 evidence that you may have received in this case.

17 However do know that to the extent that the
18 State relies on circumstantial evidence all of the CEE
19 must be consistent with each other and when taken together
20 point exclusively to the guilt of the accused beyond a
21 reasonable doubt. If these circumstances mere portray the
22 defendant's behavior as suspicious, the proof has failed.

23 Alright, ladies and gentlemen, as you know in
24 this instance the defendant has been charged with felony
25 driving under the influence resulting in grave bodily

State versus McCall

1 injury. Ladies and gentlemen, the State must first prove
2 beyond a reasonable doubt the defendant drove a vehicle
3 while under the influence of drugs.

4 Now, to prove first all they ahve to prove
5 that he was driving. Next the State must prove beyond a
6 reasonable doubt tht the defendant was sufficiently under
7 the influence to impair his ability to drive with
8 reasonable care with due regard for others and himself as
9 a reasonable prudent person would drive. It is not
10 necessary to show the defendant was in a helpless
11 condition or passed out or even intoxicated or on the
12 other hand the fact that the defendant had at sometime
13 prior to the incident took the drug, does not prove that
14 the defendant was driving under the influence.

15 Next the State must prove beyond a reasonable
16 doubt that while driving the defendant did an act
17 forbidden by law or neglected a duty imposed by law.

18 Finally the State must prove beyond a
19 reasonable doubt that the act of the defendant proximately
20 caused great bodily injury to another person.

21 Alright, ladies and gentlemen, I'm going to
22 pass down to you or pass to you in your jury room this
23 jury verdict. You can't see it from where you are but
24 it's a very simple jury verdict and I'll go it with you
25 very briefly. When you see it in the jury room, I'll

State versus McCall

1 understand exactly what it is and what you are to do.

2 It's a very simple verdict form. It has the
3 caption of the case. Then it says we the jury unanimously
4 find the defendant Terry Edward McCall -- understand this
5 says unanimously. It's important for me to know your
6 verdict must be unanimous. If you find that the State has
7 met its burden proving each and every element beyond a
8 reasonable doubt, then that must be unanimous. It can't
9 be 11 to 1, it can't be 10 to 2. It has to be a unanimous
10 verdict of all 12 of you. That verdict must be based upon
11 the evidence that was presented in court and the law as I
12 have defined it to you.

13 It can not be based upon prejudice or
14 emotion, bias, caprice or any other factor other than the
15 evidence in the facts that have been presented in this
16 case.

17 So ladies and gentlemen it goes on, as to the
18 charge of felony of driving under the influence resulting
19 in great bodily injury you have two choices, not guilty
20 and guilty. Now, don't think that from the order in which
21 I have placed these two choices that I have any particular
22 preference. One of them has to got be first and I just
23 list them on there, so don't deduce there are any secret
24 messages or attempts from me because I honestly have none.

25 After you come to a unanimous decisioon you

State versus McCall

1 will check either guilty or not guilty. Then Dr. Jones
2 after y'all have come to a unanimous decision, you will
3 sign as foreperson and date and let the bailiff know that
4 you have come to a unanimous decision.

5 Now, I'm going to send you back to your jury
6 room. I don't want you to begin your deliberations quite
7 yet. After this, the attorneys are going to hve the
8 opportunity to take exception to my charge or remind me of
9 something that I failed to say or said in here, and if I
10 made a mistake which I do from time to time and what I'll
11 do is I'll bring you back out and I'll correct it, and
12 then I'll send you back in to deliberate.

13 If there are no exceptions, I'll send back to
14 you this verdict form and you can begin your
15 deliberations. The attorneys will do an inventory of all
16 of these evidence and when they have done a full inventory
17 they will send back to evidence so you'll have that as
18 well. Please don't begin your deliberations until you get
19 a specific instruction or me to do so.

20 Please return to your jury room.

21 (Jury exits the courtroom.)

22 Exceptions to the charge?

23 MS. DRAWDY: None from the State.

24 MR. ERWIN: None from the defense.

25 THE COURT: I will congratulate and commend

State versus McCall

1 everyone for having tried an excellent case, for having
2 been civil and professional during the trial. Everyone
3 conducted themselves very well and it makes my job easier.
4 I truly do appreciate it. Thank you, very much. Good
5 luck to all of them.

6 Please take this verdict form back to them
7 and ask them to begin their two deliberations. Send the
8 alternates to my office and I will discharge them in
9 chambers.

10 (Jury begin their deliberations.)

11 THE BAILIFF: Court come to order, court is
12 now in session.

13 THE COURT: Alright, ladies and gentlemen, I
14 have been advised that the jury has reached a verdict. Is
15 everyone ready to receive the verdict?

16 (Jury re-enters the courtroom.)

17 Alright, Mr. Foreman, has the jury reached a
18 unanimous verdict, sir?

19 MR. FOREMAN: Yes, Your Honor.

20 THE COURT: Would you pass the verdict form
21 to the bailiff, please.

22 Madam Clerk, would you publish the verdict?

23 THE CLERK: Yes, sir.

24 Your Honor, this is case no 2012-GS-23-10242,
25 the State versus Terry Edward McCall. We the jury

State versus McCall

1 unanimously find the defendant Terry Edward McCall as to
2 the charge of felony driving under the influence resulting
3 in great bodily injury guilty. Signed foreperson George
4 Jones. This is your verdict, please raise your right
5 hand.

6 (Jury complies)

7 Thank you.

8 THE COURT: Alright, counsel, anything
9 further for this jury?

10 MR. ERWIN: Nothing further for the jury,
11 Your Honor.

12 MS. DRAWDY: Nothing from the State.

13 THE COURT: Any post-trial motions?

14 MR. ERWIN: I make a motion for a new trial
15 at this time.

16 THE COURT: I'll respectfully deny the
17 motion. We will respect the jury's verdict in this
18 regard.

19 If you would please approach for sentencing.

20 Anything additional the State needs to put on
21 the record with regards to sentencing in this matter?

22 MS. DRAWDY: Yes, Your Honor, we would like
23 to give the Court the defendant's record. It begins in
24 1980 with possession of methamphetamine, possession of
25 marijuana, 1981 possession of marijuana, possession with

State versus McCall

1 intent to distribute meth; 1984 petty larceny; 1985
2 shoplifting; 1986 involuntary manslaughter, obtaining
3 controlled substance by fraud; 1988 conspiracy or attempt
4 to possess crack cocaine; 1991 obtaining prescription
5 drugs by fraud, shoplifting; 1992 burglary second degree
6 and petty larceny; 1993 possession of drug paraphanilla;
7 1994 burglary Nonviolent second degree and petty larceny;
8 1995 destroying jail property and three counts of
9 obtaining prescription drugs by fraud; 2000 DUS; 2001
10 shoplifting, DUS, fraud check; 2002 driving undre
11 suspension; 2003 possession of drug parphanaila; 2005
12 possession of crack; 2007 resisting arrest, failure to
13 stop for blue light wreckless driving; 2008 possession of
14 meth, drinking alcohol in a public conveyance; 2011
15 shoplifting; 2013 in North Carolina breaking and entering
16 a motor vehicle; possession of stolen goods and resisting
17 arrest, and 2014 two counts of petty larceny and
18 shoplifting.

19 The defendant currently has eight pending
20 charges. There are some new ones in our office, the most
21 serious of which is breaking into a motor vehicle burglary
22 second degree and possession of meth or cocaine.

23 THE COURT: Let me make sure I'm clear on the
24 possible punishments, fine of no less than \$5100 and no
25 greater than \$10,100 and imprisonment between 30 days and

State versus McCall

1 15 years, am I correct?

2 MS. DRAWDY*: And the State's offer to the
3 defendant was for a 10 year sentence for a plea.

4 THE COURT: Mr. McCall, Mr. Erwin.

5 DEFENDANT MCCALL: I would like to say to the
6 family I'm sorry this wreck occurred. It was never my
7 intention for anything like this to happen and I would
8 like to take into consideration I realize I have a lengthy
9 record and I realize I made some mistake in my life but
10 everything that you read off I was not convicted of. A
11 majority it was disposed of or nole prossed or not guilty.
12 It was just my record, and I'm asking I'll be 56 years old
13 on [REDACTED] and I'm asking you to -- my poor old lady
14 was in here the other day and I'd like to see them again
15 and I want you to know that I'm sorry and if you could
16 have mercy on me, please.

17 MS. DRAWDY: I'm sure the Court was aware I
18 did not read anything that was not a conviction. There
19 are --

20 THE COURT: I understand and that will bare
21 upon my decision to some degree but not to a major extent.
22 I recognize from your record that you have a profound drug
23 problem that you have had probably since adolescents that
24 has followed you your entire life and that's what your
25 criminal record tells me.

State versus McCall

1 If there's anything that's wrong about that,
2 you're welcomed to clarify.

3 DEFFENDANT MCCALL: I agree with that, Your
4 Honor, I've had a drug problem. I know they found me
5 guilty of being impaired and I know I wasn't, but never
6 the less I needed help. I've never had any kind of help
7 in my life and I'm asking you if there's anyway you can
8 give me some help with my problem. Prison is not going to
9 do it, I've been there before. It doesn't do anything, it
10 makes things worse.

11 THE COURT: Do you have the sentencing sheet?

12 MS. DRAWDY: I do.

13 THE COURT: Alright. Mr. and Mrs. Suddith,
14 what I'm about to say has no bearing upon sentencing but I
15 do want to take the opportunity to tell you that I'm
16 personally sorry that this has happened to you.
17 Regardless of the circumstances yuo didn't deserve it and
18 as a spouse and a father I can't imagine what you felt on
19 the scene that day. Sir, I know that you have injuries
20 that are going to effect you for the remainder of your
21 life although I'm happy to have had an opportunity to
22 spend some time with you, I'm sorry that it's under these
23 circumstances and I'm sorry this happened to you. You
24 didn't deserve it.

25 Mr. McCall, again, in looking at your record

State versus McCall

1 it looks like you have a very profound drug problem. Drug
2 problem has followed you for all of your adult life, it
3 appears. Not with standing your assertion that you were
4 not under the influence of an intoxicant, the evidence was
5 overwhelming that you were. I recognize the position that
6 you take. That position is without credibility, okay.

7 Regardless of whether you were under the
8 influence even driving that car and the condition it was
9 in and given your self-professed physical issues you were
10 having at that point demonstrates a wreckless disregard fo
11 the safety of others. Regardless of whether you
12 characterize it as an intoxication or just a general
13 malfescents, it's not the kind of conduct that can be
14 tolerated in our community.

15 Now, understand this when I sentence people
16 I'm looking at three things. I'm looking at
17 rehabilitation, the deterrant effect and I'm looking at
18 punishment. If you're a first time offender, I'm looking
19 at rehabilitation and I'm looking at punishment last and
20 you would get probation in most cases, but when you become
21 an incorrable crimial and you demonstrate over the course
22 of 30 years that you lack the ability to exercise
23 responsibility and conform you conduct to the mandates of
24 a civil sociëty and it ultimately manifests itself in you
25 almost killing someone and affecting him for the res: of

State versus McCall

1 his life and his daughter mentally for the rest of her
2 life and his wife mentally for the rest of her life, then
3 that's something that is entirely inexcusable.

4 I know as a matter of fact based on my
5 experience in this system you have been given chance after
6 chance after chance. I know that there have been any
7 number of times when you have come in front of a judge
8 like me or another type and you have asked for help with
9 your drug problem and you have not taken advantage of it.

10 DEFENDANT MCCALL: I've never had any
11 treatment, Your Honor, never.

12 THE COURT: Mr. McCall, when I sentence you I
13 want you to know, as I've spoken to you any number of
14 times, my decision in this case has not been personal in
15 any way, shape, or form and I wish no ill-will upon you
16 and I have no personal animosity towards you what so ever.
17 The sentence that I hand down in my estimation reflects
18 your conduct in context with the law.

19 Given that, sir, you are to be sentenced to
20 the State Department of Corrections for a period of 15
21 years credit for time served. While you are in the
22 Department of Corrections I recommend the addiction
23 treatment unit.

24 DEFENDANT MCCALL: Your Honor, do I get cred
25 for the ---

State versus McCall

1 MR. ERWIN: He gave you credit.

2 THE COURT: I gave you all credit statutory
3 time that you are entitled to that is subsequent to the
4 issuance of your initial ticket you get that time.

5 Good luck to you, sir.

6 DEFENDANT MCCALL: This here is non-violent?

7 THE COURT: It is non-violent.

8 Good luck to you, sir.

9 Ladies and gentlemen, you can return to your
10 jury room and relieve you of your responsibilities this
11 week and give you an opportunity to ask me any questions
12 you may have.

13 Thank you.

14 ---END OF TRANSCRIPT RECORD---

15

16

17

18

19

20

21

22

23

24

25

State versus McCall

1 I, the undersigned Caroline Hiskell, Official
2 Court Reporter for the Thirteenth Circuit of the State of
3 South Carolina, do hereby certify that the foregoing is a
4 true, accurate, and complete transcript of record of all
5 proceedings had and evidence introduced in the trial of
6 the captioned case, relative to appeal, in Court of
7 General Sessions, Greenville County, this 14th day of May,
8 2015.

9 I do further certify that I am neither of kin,
10 counsel, nor interest to any party hereto.

11
12
13 -----

14 Caroline Hiskell
15
16
17
18
19
20
21
22
23
24
25

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE) COURT OF GENERAL SESSIONS
) 2012-GS-23-10242
) **ORIGINAL**
)
STATE OF SOUTH CAROLINA)
PLAINTIFF)
vs.) TRANSCRIPT OF RECORD
)
TERRY E. MCCALL)
DEFENDANT)

March 14, 2017
Greenville, South Carolina

B E F O R E:

THE HONORABLE ROBIN B. STILWELL, Judge.

A P P E A R A N C E S:

SARA LEE DRAWDY, ASSISTANT SOLICITOR
JUDY MUNSON, ASSISTANT SOLICITOR
STAN OVERBY, ASSISTANT SOLICITOR
Attorneys for the State

JOHN STROM, ESQ.
Attorney for the Defendant

APRIL HERRON
Official Court Reporter

INDEX OF WITNESSES

TRACY LANCE

Direct By Mr. Strom 9

JOEL LANFEAR

Direct By Mr. Strom 24

Cross By Ms. Drawdy 28

Examination By The Court 29

JOSH ROBINSON

Direct By Mr. Strom 30

Cross By Mr. Overby 39

TOMMY BROOKS

Direct By Mr. Strom 45

JAKE ERWIN

Direct By Mr. Strom 48

Cross By Mr. Strom 63

Cross By Mr. Overby 67

Redirect By Mr. Strom 68

TERRY MCCALL

Direct By Mr. Strom 79

Cross By Ms. Munson 91

» > ○ < «

Certificate of Reporter 102

COURT EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
1	Affidavit of Tracy Lance	18	18
2	Affidavit of Chris Stache	21	21
3	Affidavit of Teresa Dwease	21	21
4	Affidavit of Joshua Robinson	22	22
5	Affidavit of Corporal Tommy Brooks	22	22
6	Affidavit of Robert Suddeth	24	24

1	7	Affidavit of Juliette Martin	24	24
2	8	Affidavit of Terry McCall	24	24
3	9	Courtroom Journal	26	26
4	10	Exhibit Receipt Dates 5-14-15	27	27
5	11	Patient Records	44	44
6				
7				
8				
9				
10				
11				
12				
13				
14				
15				
16				
17				
18				
19				
20				
21				
22				
23				
24				
25				

1 THE COURT: All right, ladies and gentlemen,
2 we're on the record in the case of The State vs.
3 Terry McCall. And the appellate case number is
4 2015-001097. We are here before the Court today for
5 a reconstruction hearing, as ordered by the South
6 Carolina Court of Appeals.

7 Mr. McCall, I recognize that you had a motion
8 you wanted to argue before we get started, sir?

9 MR. MCCALL: I go ahead and waive that motion,
10 Your Honor.

11 THE COURT: Yes, sir. Okay, thank you,
12 Mr. McCall, I appreciate it.

13 Okay. All right. Then we can begin with the
14 proceedings. I know that we're going to go a little
15 bit out of order today because I have been advised
16 that the doctor has a commitment at two o'clock. So,
17 we're going to handle the doctor's testimony and
18 trying to reconstruct any gaps in the record and
19 identify objections and the rulings on the same
20 during the course of her testimony. So, I defer to
21 counsel. You can preface her testimony or discuss
22 the same and call her to the stand, if necessary.

23 MR. STROM: Thank you, Your Honor. One brief
24 issue that I'd like to talk about before we get into
25 testimony.

1 THE COURT: Yes, sir.

2 MR. STROM: It's my understanding that The State
3 would like Ms. Drawdy to question the witnesses. We
4 would move to have her, essentially, designated as a
5 witness, pursuant to The State v. Sierra and The
6 State v. Lee, as well as Rule 3.7. The Rules of
7 Professional Conduct dealing with restrictions on
8 lawyers acting as advocacies in the same proceeding.

9 THE COURT: Yes, sir.

10 MR. STROM: We realize it's not a pure
11 adversarial system, Your Honor. It just comes down
12 to the risk that was primarily identified in State v.
13 Sierra that during cross-examination, she may end up,
14 essentially, pitting herself against a witness. And
15 so, frankly, we'd like to avoid that. And have her
16 just act solely in the capacity as a witness as
17 opposed to having -- and she can certainly help
18 Ms. Munson as far as suggesting questions and things
19 like that. But actually serving as counsel for The
20 State, we would move to, I suppose, relieve her of
21 that role.

22 THE COURT: Okay. All right. Okay. I'm going
23 to respectfully deny. I appreciate your position on
24 that and I certainly understand the authority which
25 you cite. However, thoughts contemplate that we

1 would be in a adversarial proceeding as opposed to a
2 strictly ministerial proceeding where we're being
3 ordered to reconstruct the -- reconstruct the record
4 to the extent possible in the first proceeding.

5 Ms. Drawdy is here because it's essential that she be
6 here in order to reconstruct the hearing. She's not
7 acting as an advocate on behalf of the State. And I
8 will instruct both -- all attorneys in the courtroom
9 that I don't consider any of you acting as advocates
10 on behalf of either particular party. You are here
11 as officers of the court in a ministerial capacity to
12 reconstruct the record. And that is all.

13 So, if at some point in time I feel there may be
14 advocacy and that we're conducting ourselves in
15 something other than a ministerial capacity as
16 officers of the court, then we can address it at that
17 point. But as I sit here, I don't think that those
18 rules of professional conduct bearing upon witnesses
19 and who may be advocates not being able to represent
20 a party are applicable. So, having said that, I
21 think it was much, much more productive and practical
22 for Ms. Drawdy to act in the capacity as The State's
23 attorney in a reconstruction hearing, than for
24 someone who was not involved in the prosecution at
25 all. Okay. It would be of help and assistance to

TRACY LANCE-DIRECT BY MR. STROM

1 the Court. All right. Okay.

2 MR. STROM: Thank you, Your Honor.

3 THE COURT: Yes, sir.

4 MR. STROM: We now call Dr. Tracy L. Lance to
5 the stand.

6 THE COURT: Yes, sir, you may.

7 MR. STROM: One final thing, Your Honor, I don't
8 know your rules regarding referring to security, but
9 Mr. McCall, if we can get him uncuffed so he can take
10 some notes during the hearing.

11 THE COURT: I defer entirely to the officers in
12 the courtroom with regards to security.

13 MR. STROM: I understand. If y'all are
14 comfortable doing it, I'm comfortable allowing you to
15 do it.

16 THE DEPUTY: We're just going to have him remain
17 cuffed.

18 THE COURT: Okay.

19 MR. STROM: Thank you, Your Honor.

20 TRACY LANCE, after being duly sworn,
21 testified as follows:

22 THE CLERK: Please be seated, state your name
23 for the record.

24 THE WITNESS: Tracy Lance.

25 DIRECT EXAMINATION

TRACY LANCE-DIRECT BY MR. STROM

1 BY MR. STROM:

2 Q Good afternoon, Dr. Lance, thank you for being
3 here, we'll try to keep this as brief as possible. Do you
4 recall treating Mr. McCall?

5 A Yes.

6 Q Do you recall testifying in his trial?

7 A Yes.

8 Q We had a substantial portion or a significant
9 portion of your testimony missing. With the agreement of
10 the Solicitors, the trial testimony is in those three
11 binders to your left, three booklets to your left.
12 They're consecutively page numbered. It would be Page 357
13 is where your missing testimony begins. And if you need
14 to just to refresh your memory, turn to Page 354, 355 and
15 sort of read through.

16 A (The witness complies.)

17 Q I'm sorry, 358 is actually where the missing
18 portion of the testimony is. The last part of this that's
19 transcribed is beginning on Line 13.

20 A Uh-huh.

21 Q Do you recall you had just talked about how
22 Mr. McCall's pupils were reactive? And roughly equal
23 size. Then you were turning to the issue of the different
24 drugs found on the screen. Do you recall whether that
25 screen was provided, that drug screen was provided by SLED

TRACY LANCE-DIRECT BY MR. STROM

1 or provided by the Greenville County Hospital System that
2 you were referring to in your testimony?

3 A The Greenville Hospital System.

4 Q And then do you recall the, with any degree of
5 certainty, the remaining drugs that he tested positive
6 for?

7 A Not without looking at his chart.

8 Q Okay.

9 And, Your Honor, I have -- may I approach?

10 THE COURT: Yeah, sure.

11 MR. STROM: I had the clerk's office bring up
12 the Court Exhibits if you just bear with me for one
13 second.

14 THE COURT: Sure.

15 MR. STROM: May I approach the witness, Your
16 Honor?

17 THE COURT: Yes, sir.

18 BY MR. STROM:

19 Q I'm showing Dr. Lance exhibits -- State's
20 Exhibits A through I, do you recognize those?

21 A The top one I don't. Looks like that's a chain
22 of custody, I don't deal with that. These I don't.

23 Q Okay.

24 A This is his hospital.

25 Q Okay.

TRACY LANCE-DIRECT BY MR. STROM

1 A This is the chart.

2 Q And that is Exhibit E.

3 A Yes, sir.

4 Q Okay. Turning to Exhibit E, Dr. Lance, do you
5 have -- you've already spoken about, I believe it was, the
6 prescription drug -- do you remember your basis for
7 concluding that there were other drugs in his system based
8 on Exhibit E?

9 A Yes, there was a drug screen that was done.

10 Q Okay. What are the other drugs in -- it tested
11 positive for?

12 A Sympathetic amines, benzodiazepines, cocaine,
13 opioids, and cannabinoids.

14 Q And that record that you're relying on, Exhibit
15 E, that only test positive for whether or not it's above
16 the threshold; is that correct?

17 A That I don't know.

18 Q So, it's just an initiative?

19 Just to clarify, Your Honor, and I'll move
20 along shortly.

21 THE COURT: Yes, sir.

22 BY MR. STROM:

23 Q But that's not -- the reading is is that it's
24 initial --

25 And I apologize for leading.

TRACY LANCE-DIRECT BY MR. STROM

1 But it's an initial positive test result
2 above the stated threshold, correct?

3 A It's above the cutoff, what they call the cutoff
4 level.

5 Q The cutoff, yes.

6 A Yeah.

7 Q It's not a specific amount?

8 A No.

9 Q Okay.

10 THE COURT: And, Mr. Strom, I'll advise you and
11 all the other attorneys, I'll let you lead. We're
12 reconstructing a hearing, okay.

13 MR. STROM: Thank you, Your Honor.

14 THE COURT: Yes, sir.

15 BY MR. STROM:

16 Q Dr. Lance, to the best of your recollection, do
17 you recall if there were any objections lodged during your
18 testimony?

19 A Any objections?

20 Q Did either of the other attorneys or Mr. McCall
21 stand up and say, Objection?

22 A Yes.

23 Q And you were instructed to stop. Do you recall
24 how many times it occurred?

25 A Once, I think.

TRACY LANCE-DIRECT BY MR. STROM

1 Q And if you'll turn to Page 357.

2 A In here, I think.

3 Q Beginning on Line 3. You see the objection from
4 Mr. McCall?

5 A Yes.

6 Q Do you recall if there were any additional
7 grounds stated for that objection? Do you have a specific
8 recollection one way or another as to whether there was
9 any subsequent argument taken on the issue?

10 A I don't think so.

11 Q Okay. Okay. And do you recall who
12 cross-examined you? Whether it was Mr. McCall or
13 Mr. Erwin? Do you remember if it was my client,
14 Mr. McCall, that cross-examined you?

15 A I don't remember for sure. I think so.

16 Q It was quite some time ago so that's very likely
17 an answer. But you say you only have a specific
18 recollection as to that one objection?

19 A Correct.

20 Q And you don't recall there being any further
21 argument on Page 357 regarding that objection?

22 A No.

23 Q Okay.

24 MR. STROM: No further questions, Your Honor.

25 THE COURT: I don't presume The State has any

TRACY LANCE-DIRECT BY MR. STROM

1 questions?

2 MS. DRAWDY: No, Your Honor.

3 THE COURT: All right, thank you very much for
4 coming, I appreciate it.

5 MR. STROM: Thank you for coming, doctor.

6 THE WITNESS: Sure. Do I just leave this here?

7 THE COURT: Yes, ma'am, you may leave that
8 there. Thank you, very much, I appreciate it.

9 MR. STROM: May I approach, Your Honor?

10 THE COURT: Sure.

11 MR. STROM: Just scheduling wise let's do the
12 affidavits now if that's okay with you.

13 THE COURT: Well, let's talk through that and
14 let's make sure that there aren't any outstanding
15 issues regarding her testimony and objections that
16 either have been identified or recollected regarding
17 her testimony.

18 MS. DRAWDY: Sara Lee Drawdy. I was responsible
19 for direct on this particular witness. I, likewise,
20 only recall that single objection. I do not recall
21 any objections during the gap in testimony. And
22 there certainly weren't none during
23 cross-examination.

24 THE COURT: Okay.

25 Mr. Erwin, and I so directed Mr. Jake Erwin who

1 was standby counsel and ultimately began representing
2 Mr. McCall, in the examination of the doctor, do you
3 remember, first of all, if you conducted
4 cross-examination or whether Mr. McCall did?

5 MR. ERWIN: Big caveat to everything I'm going
6 to say involved in this hearing that I feel like I
7 need to say on the record, I know I said this
8 individually to all the players, but just for the
9 record.

10 THE COURT: Yes, sir.

11 MR. ERWIN: A little context here, I was
12 appointed in the middle of the trial so I did not
13 prep for this case. That is going to effect the way
14 I remember it a lot. Because I didn't spend nearly
15 as much time with this case the other attorneys would
16 have.

17 THE COURT: Right.

18 MR. ERWIN: And also, in the moment, in doing
19 the trial would not have really been keeping notes
20 because I'm trying to keep my head up and watch
21 what's happening because I didn't know what was going
22 to happen next. So, all that being said, if it was a
23 question of who cross-examined the doctor, it would
24 have been me. But again, I'm just kind of going off
25 what I think my practice would have been, not

1 necessarily specific memory.

2 THE COURT: I understand. I understand.

3 MR. ERWIN: I think it would have been me. If
4 it was a question of whether I crossed or Terry
5 crossed --

6 THE COURT: Yes, sir.

7 MR. ERWIN: My suspicion in thinking about this
8 case is that I probably would only have -- I mean,
9 ultimately, it would have been Terry's call. But I
10 probably would have strongly suggested that he not
11 cross any witnesses who were sophisticated,
12 professional, a doctor, for example, or anybody from
13 law enforcement. I remember he crossed his
14 girlfriend and that's fine, a lay witness I would
15 have been a little -- giving him a little more leeway
16 as far as letting him do that. But I think I would
17 have strongly suggested that he not try to cross her.
18 Obviously, somebody crossed her, it probably was me.
19 Do I remember specific things that I would have
20 crossed her on or things I would have objected to,
21 absolutely not. But I can tell you what I probably
22 would have done.

23 THE COURT: Okay. And what you've said squares
24 fairly well with my recollection as well. By the
25 way, that's good tactical practice that you

1 articulated. But it is my recollection and the
2 recollection of everyone here that there was only one
3 objection that was made during the examination and/or
4 cross-examination of the doctor that was made by
5 Mr. McCall. And I know you don't recollect that and
6 I'm not asking you to recollect that. I can tell you
7 that no one recalls any additional objection. And I
8 can tell you as the Judge presiding over the case, I
9 don't recall any other objection to that witness
10 either. And I don't think based on who she was and
11 what she was testifying to, that there were a lot of
12 possibilities or potentials for objections. Both
13 from a tactical standpoint that you suggest and just
14 from an evidentiary standpoint. You take exception
15 to any of that?

16 MR. ERWIN: I do not.

17 THE COURT: Okay. All right. Okay.

18 Yes, ma'am.

19 MS. DRAWDY: Your Honor, at this time I would
20 like to submit the affidavit with regard to Dr. Lance
21 that I have signed and of my recollection. And I put
22 that into the record what it states, if it would make
23 it easier for the reconstruction, and also I'd like
24 to introduce this as an exhibit. Mr. Strom has been
25 provided with this.

1 THE COURT: Okay.

2 MS. DRAWDY: It's in affidavit form. I do
3 recall that both -- that Mr. McCall had some
4 questions for Dr. Lance and then Mr.~Erwin also asked
5 her questions. There's one question that's specific
6 that I remember Mr. McCall asking about whether or
7 not he had been given Ginger Ale in the ER. And her
8 response was she did not recollect that and it was
9 not recorded.

10 THE COURT: Okay.

11 MS. DRAWDY: But I'd like to introduce the
12 record reconstruction summary in affidavit form for
13 Tracy L. Lance in evidence at this time as part of
14 the reconstruction record.

15 THE COURT: All right, if you'll mark it I'll
16 introduce it as Court's Exhibit No. 1.

17 MR. STROM: No objection, Your Honor.

18 THE COURT: All right, thank you.

19 (WHEREUPON, Court's Exhibit No. 1 was marked for
20 identification and received into evidence.)

21 MS. DRAWDY: And there are other similar ones--

22 THE COURT: Okay, hold on let her finish.

23 THE COURT REPORTER: Thank you.

24 THE COURT: Okay, before we move on to another
25 witness, just let me say, I think that we've

1 discussed the examination and the record as it
2 relates to the doctor. And the only objection that
3 has been recalled is the one which actually appears
4 in this transcript of record on Page 357. And I
5 would suggest that the record stands for itself.

6 All right, yes, sir.

7 MR. STROM: Yes, Your Honor. The one issue that
8 Mr. McCall has, who I was planning on having testify
9 today, has a slightly different recollection of the
10 objection that he made.

11 THE COURT: Okay.

12 MR. STROM: So, it may be an issue of the
13 correctness of the transcript.

14 THE COURT: Oaky.

15 MR. STROM: Certainly we can cross that bridge
16 when he gets put up to testify.

17 THE COURT: When Mr. McCall gets up, if he wants
18 to state some exceptions to what appears in the
19 record, I'll allow him to do that.

20 MR. STROM: Thank you, Your Honor.

21 THE COURT: Yes, sir. Okay.

22 MR. STROM: And now -- I'm sorry, Your Honor.

23 THE COURT: No, go ahead.

24 MR. STROM: I was going to go ahead and offer up
25 the remaining exhibits that we've agreed to --

1 THE COURT: Yes, sir.

2 MR. STROM: As far as the specific witnesses.
3 So, it's Chris Stache, who was the emergency first
4 responder. You want to read them out loud or we can.
5 . .

6 THE COURT: No, what you can do is if they are
7 sufficient to establish the record and they recite
8 any and all objections that were made and the rulings
9 that were made on those objections and the basis for
10 those rulings, then you can just put them in the
11 record. We'll make them a Court's Exhibits, they'll
12 stand for themselves. If there's something you need
13 to add to them, then certainly you can place that on
14 the record as well. I just want to make sure that
15 when we give them, we all have our appellate advocate
16 hats on and we say, okay is this something that the
17 Appellate Court can look at and determine what
18 happened.

19 MS. DRAWDY: Mr. Strom and I are in agreement
20 that the record reconstruction summaries in affidavit
21 form for Chris Stache and for Teresa Dwease are an
22 accurate reflection of what occurred during the gaps.
23 There's also a summary that states who
24 cross-examined, whether there was cross-examination
25 and whether there were objections. We are in

1 agreement that there were no objections raised during
2 these two witnesses testimony. And that the exhibits
3 that were introduced by -- while Ms. Dwease was on
4 the stand, were accepted into evidence without
5 objection from Mr. McCall or Mr.~Erwin. And we would
6 like to have theses marked as Exhibits 2 and 3.

7 THE COURT: Okay.

8 MS. DRAWDY: And entered into the record as an
9 agreement by all the parties that these are accurate.

10 THE COURT: Okay.

11 MS. DRAWDY: Recollection of what happened.

12 THE COURT: All right.

13 MR. STROM: That's correct, Your Honor.

14 THE COURT: Okay. All right, then we'll mark
15 those as Court's Exhibit No. 2 and No. 3.

16 MS. DRAWDY: Your Honor--

17 THE COURT: Hold on, let Ms. Herron mark those.

18 (WHEREUPON, Court's Exhibits Nos. 2 & 3 were
19 marked for identification and received into
20 evidence.)

21 THE COURT: Yes, ma'am.

22 MS. DRAWDY: Your Honor, Mr. Strom and I are
23 also introducing as foundational documents, record
24 reconstruction summaries in the inform of affidavits
25 for the testimony of Joshua Robinson, a State's

1 witness who was a EMS worker. And for Corporal Tommy
2 Brooks with the MAIT Reconstruction Team. We agree
3 that in so far as they go they are accurate but he
4 wants to cross-examine these witnesses.

5 THE COURT: Okay.

6 MS. DRAWDY: And flesh out some additional
7 aspects of their testimony.

8 THE COURT: Sure.

9 MS. DRAWDY: We would like to introduce these as
10 exhibits.

11 THE COURT: That would be four and five?

12 MS. DRAWDY: Four and five.

13 THE COURT: Okay. And just before we introduce
14 them, that's subject to your cross-examination,
15 Mr. Strom.

16 MR. STROM: Yes, Your Honor.

17 THE COURT: Okay.

18 MR. STROM: And that would also be subject to
19 cross-examining the attorneys as well.

20 THE COURT: Okay, that's fine. So, we'll
21 introduce those as Court's Exhibits 4 and 5.

22 (WHEREUPON, Court's Exhibits Nos. 4 & 5 were
23 marked for identification and received into
24 evidence.)

25 THE COURT: All right.

1 MS. DRAWDY: We have three more reconstruction
2 summaries in the form of affidavits that have been
3 prepared by the State's attorneys and affidavits
4 attached. Also subject to the same right of
5 cross-examination of witnesses.

6 THE COURT: Okay.

7 MS. DRAWDY: They would be from the witness
8 Robert Suddeth, who was the victim in this case. For
9 Defense witness, Juliette Martin. And for the
10 Defendant's testimony, Terry McCall.

11 THE COURT: Okay. All right. So, subject to
12 the same exception, we'll present those as exhibits
13 as well.

14 Correct, Mr. Strom?

15 MR. STROM: Yes, Your Honor.

16 THE COURT: Okay.

17 MS. DRAWDY: And, Your Honor, I would add that
18 these are in affidavit form.

19 THE COURT: Okay.

20 MS. DRAWDY: So, we would like for them to be
21 considered as part of the record.

22 THE COURT: They are, I'm making them Court's
23 Exhibits.

24 MS. DRAWDY: Okay.

25 MR. STROM: Your Honor--

1 THE COURT: Hold on--

2 MR. STROM: I'm sorry.

3 THE COURT: Wait until she's done, okay.

4 MR. STROM: I'm sorry.

5 THE COURT: She's got to mark it, log it, make
6 sure it's in the record. As I'm sure you're aware,
7 the Court Reporter has a very important role to play.

8 MR. STROM: Yes, sir.

9 (WHEREUPON, Court's Exhibits Nos. 6, 7 & 8 were
10 marked for identification and received into
11 evidence.)

12 THE COURT: Okay, counsel, we can proceed.

13 MR. STROM: Your Honor, we would call Joel
14 Lanfear to the stand.

15 JOEL LANFEAR, after being duly sworn,
16 testified as follows:

17 THE CLERK: Ms. Lanfear, please state your name
18 for the record.

19 THE WITNESS: My name is Joel Lanfear.

20 DIRECT EXAMINATION

21 BY MR. STROM:

22 Q Ms. Lanfear, I realize you're now at the
23 solicitor's office but back in May of 2015, you were
24 employed by the clerk's office?

25 A Yes, sir.

JOEL LANFEAR-DIRECT BY MR. STROM

1 Q And you were the member of the clerk's office
2 that sat on Mr. McCall's trial?

3 A Yes.

4 Q As far as --

5 If, Your Honor, if I may approach?

6 THE COURT: Yes, sir. You may lead too.

7 MR. STROM: I'll absolutely take it.

8 BY MR. STROM:

9 Q The first document there, Ms. Lanfear, do you
10 recognize it?

11 A I do.

12 Q Is that -- what is it?

13 A This is a courtroom journal that is -- was part
14 of my responsibilities as a courtroom clerk to maintain
15 kind of record of what was going on.

16 Q Okay. So, have you reviewed that document?

17 A I did a while ago but, yes.

18 Q To the best of your recollection is it an
19 accurate reflection of the events of the trial?

20 A Yes.

21 MR. STROM: Okay, Your Honor, we mark that as
22 Court's Exhibit 6 --

23 MS. DRAWDY: 7.

24 THE COURT REPORTER: Nine.

25 MR. STROM: Nine.

JOEL LANFEAR-DIRECT BY MR. STROM

1 THE COURT: Nine, okay.

2 All right, without objection?

3 MS. DRAWDY: Without objection, Your Honor. We
4 would have introduced it if he hadn't.

5 THE COURT: Okay. All right.

6 Ms. Lanfear, will you hand that to Ms. Herron so
7 that she can mark that.

8 THE WITNESS: Yes, sir.

9 (WHEREUPON, Court's Exhibit No. 9 was marked for
10 identification and received into evidence.)

11 THE WITNESS: So, do I need to refer to it?

12 BY MR. STROM:

13 Q No, I was going to have you to identify the
14 exhibit list.

15 A Yes, this is the exhibit list that Caroline put
16 together for what was introduced in evidence.

17 Q And you were a member of the clerk's office that
18 reviewed it and signed it?

19 A Yes.

20 Q So, to the best of your recollection and memory,
21 this receipt for the exhibits is a true and accurate
22 reflection of the exhibits that were entered into at
23 trial? Entered into evidence at trial?

24 A Yes.

25 MR. STROM: Your Honor, we move to have that

JOEL LANFEAR-DIRECT BY MR. STROM

1 marked as Court's Exhibit 10.

2 THE COURT: Okay, I presume there's no objection
3 to that?

4 MS. DRAWDY: No, objection.

5 THE COURT: All right, let us mark it as Court's
6 Exhibit No. 10. It is so introduced.

7 MS. DRAWDY: Your Honor, I believe that's
8 already a part of the official record of the trial.

9 THE COURT: Okay. Inasmuch as he's referenced
10 it again, we'll just mark it as 10.

11 MR. STROM: For the Court's information, the
12 clerk's journal isn't in the public file so that's
13 why I wanted to move it in.

14 THE COURT: I understand.

15 MR. STROM: Out of an abundance of caution.

16 THE COURT: That makes sense.

17 MR. STROM: I --

18 THE COURT: Hold tight and let her mark it and
19 then we'll move on, okay?

20 (WHEREUPON, Court's Exhibit No. 10 was marked
21 for identification and received into evidence.)

22 THE COURT: Okay, you're good.

23 MR. STROM: I have no further questions, Your
24 Honor.

25 MS. DRAWDY: I have a few.

JOEL LANFEAR-CROSS BY MS. DRAWDY

1 THE COURT: Okay.

2 CROSS-EXAMINATION

3 BY MS. DRAWDY:

4 Q Just to clarify your courtroom journal.

5 A Yes.

6 Q And what you were doing with the entries that
7 you made, is one of the things that you did is right the
8 time that a witness took the stand and the time they left
9 the stand?

10 A Yes.

11 Q And did you do that throughout the trial?

12 A Yes.

13 Q I noticed in one place toward the bottom of the
14 first page, it's a two page document, that you have
15 Exhibits 2 through 25 listed.

16 A Yes.

17 Q What does that indicate?

18 A This witness was on the stand when the exhibits
19 were introduced.

20 Q Okay. Did you continue that throughout the
21 trial?

22 A I did not.

23 Q And so, you -- just because there are no --
24 that's the only time you did it?

25 A Yes.

JOEL LANFEAR-EXAMINATION BY THE COURT

1 Q So, were there other exhibits entered into
2 evidence that you did not note in the journal?

3 A Yes, there were a lot of them, yes.

4 Q Okay.

5 MS. DRAWDY: Those are all the questions I have.

6 THE COURT: Okay.

7 EXAMINATION

8 BY THE COURT:

9 Q Ms. Lanfear, I'll ask you this. You wrote the
10 time they took the stand and the time they got off the
11 stand; right?

12 A Yes.

13 Q And if there were a break in between that
14 testimony, your notes wouldn't reflect the break?

15 A Yes, they do.

16 Q They do reflect the break?

17 A Yes.

18 THE COURT: Okay, good enough, that's all I
19 need. Thank you, very much.

20 MR. STROM: We now call Mr. Robinson to the
21 stand.

22 THE BAILIFF: Place your left hand on the Bible,
23 raise your right hand and face the Clerk.

24 JOSH ROBINSON, after being duly sworn,
25 testified as follows:

JOSH ROBINSON-DIRECT BY MR. STROM

1 THE CLERK: Please be seated and state your name
2 for the record.

3 THE WITNESS: Josh Robinson.

4 DIRECT EXAMINATION

5 BY MR. STROM:

6 Q Mr. Robinson, do you recall responding to the
7 accident in this case?

8 A I remember portions of it, yeah.

9 Q And how -- well, by way of sort of introduction,
10 how long have you been a first responder and how long were
11 you a first responder at the time that you responded to
12 this accident back in 2000 -- excuse me, March 4th 2012?

13 A I began as a first responder in 2004, I believe.
14 And if it was in 2012, would have been eight years.

15 Q Okay. And then, at the time, your partner was
16 Mr. Gary Clark.

17 A Correct.

18 Q And he is currently lives in Canada?

19 A Yeah, I believe he was living in Main and I
20 believe he moved over into Canada.

21 Q And so, do you also have any -- do you have a, I
22 guess, distinct memory of testifying in this case?

23 A I remember vague portions of it, I guess.

24 Q Would, perhaps, looking at a summary of your
25 testimony jog your memory?

JOSH ROBINSON-DIRECT BY MR. STROM

1 A It might.

2 MR. STROM: Your Honor, we request to show
3 Mr. Robinson his -- the affidavit that was compiled
4 by the attorneys.

5 THE COURT: Sure, absolutely.

6 BY MR. STROM:

7 Q Hand you now, Mr. Robinson, Court's Exhibit 4.
8 Just take a second to review the. . .

9 A Yeah, that seems to be pretty accurate.

10 Q Okay, I'd just like to ask you a few questions
11 about now your refreshed memory.

12 A Yes.

13 Q And if you need to refer back to it, let me
14 know.

15 A Sure.

16 Q You testified -- or the affidavit states that
17 you testified -- or excuse me, that you treated primarily
18 Juliette Suddeth?

19 A Correct.

20 Q And that your partner, Mr. Clark, treated
21 Mr. McCall?

22 A Correct.

23 Q And so, to the best of your recollection
24 Mr. Clark was not present at trial?

25 A He was not present, no.

JOSH ROBINSON-DIRECT BY MR. STROM

1 Q Do you have a specific recollection that
2 Mr. McCall was acting erratically at the time that he was
3 being transported?

4 A He was -- he was very concerned with what was
5 going on.

6 Q Just to clarify that for me, are you talking
7 about with regards to his teeth being badly damaged or an
8 injury?

9 A I can't speak for certain but I believe I
10 testified that it was more or less that he felt bad about
11 the accident and that it had occurred.

12 Q Do you recall having -- excuse me, do you recall
13 reviewing a report generated by your partner, Mr. Clark?

14 A Yeah.

15 MR. STROM: Your Honor, may I approach with what
16 was original trial Exhibit 28?

17 THE COURT: Yes, sir.

18 BY MR. STROM:

19 Q This was an original exhibit that was introduced
20 at trial. Do you recall if you were the witness that it
21 was introduced through?

22 A I don't recall.

23 Q All right. And based on your knowledge, I'm
24 assuming you've filled out or seen hundreds of these
25 reports done?

JOSH ROBINSON-DIRECT BY MR. STROM

1 A Yes.

2 Q Who else, other than you and your partner, would
3 have -- would have had sufficient knowledge to enter in
4 that report?

5 A It would have just been me or my partner.

6 Q So, if the -- the only two people who would have
7 been in a position to know about this report's creation,
8 how it was drafted, are you and Mr. Clark?

9 A Yes. I'm not sure if the administrators at
10 Greenville County EMS generated reports to bring to court
11 that day.

12 Q And Greenville County EMS, are they controlled
13 by Greenville Hospital System?

14 A No.

15 Q It's a government agency?

16 A It's a county agency?

17 Q County agency?

18 A Correct.

19 Q Okay.

20 A I believe they may have been introduced by a
21 Sally Clark, possibly. But I can't say for certain.

22 Q Okay. But the actual author of this report is?

23 A Gary Clark.

24 Q Gary Clark?

25 A Correct.

JOSH ROBINSON-DIRECT BY MR. STROM

1 Q Do you recall there being any objections during
2 your testimony from either the Defense or the State?

3 A I don't recall.

4 Q Do you recall being asked to give an opinion as
5 to whether or not dilated pupils were consistent with
6 someone taking a specific kind of drug?

7 A Yeah, I believe that was asked.

8 Q Okay. Do you recall, one, your answer to it?

9 A Uh-huh.

10 Q If you could give-- I'm sorry, what was your
11 answer?

12 A Usually -- I don't remember exactly what I said
13 during that court case. But in my professional opinion,
14 dilated pupils are usually associated with some sort of
15 amphetamine usage.

16 Q Okay. And do you recall over the course of
17 providing that opinion, there being any interruptions by
18 Defense counsel or by the Defense?

19 A I can't specifically recall any.

20 Q I mean, if you can't remember, you can't
21 remember.

22 A Right.

23 Q Do you recall approximately the length of time
24 that you were being asked questions by either Mr. McCall
25 or by Mr.~Erwin?

JOSH ROBINSON-DIRECT BY MR. STROM

1 A Probably about 20 minutes or so, roughly.

2 Q And do you remember, generally, what the subject
3 of that cross-examination was?

4 A No, I don't. Just the cross-examination?

5 Q Correct.

6 A No, I can't remember off the top of my head.

7 Q And then with respect to Exhibit 28, again, if
8 you still have it in front of you.

9 A Uh-huh.

10 Q At the top right corner of Page 1 it indicates
11 that you have crew number one and crew two?

12 A Correct.

13 Q It shows you as the driver?

14 A Correct.

15 Q And yet, if you turn to the affidavit submitted
16 by counsel, it references the fact that you evidently
17 testified to observations of both Mr. Clark entering the
18 report and of the Defendant?

19 A Correct. So in this, in Exhibit 28, Gary had
20 marked me as the driver, it should have been marked as a
21 secondary caregiver. On the report that I generated for
22 Ms. Juliette Suddeth, I was listed as the primary
23 caregiver and he was the secondary caregiver. From the
24 best of my recollection, we were actually drove in by a
25 member of the Parker Fire Department.

JOSH ROBINSON-DIRECT BY MR. STROM

1 Q And then again, to the best of your
2 recollection, there was no objections to you looking at
3 this report. Do you recall the extent to what you used
4 this report in your initial testimony?

5 A I just reviewed it and any other questions that
6 were asked, I probably refereed back to either this report
7 or the report that I offered.

8 Q Again, you didn't do any -- again, you were
9 mostly focused on Ms. Suddeth?

10 A Correct.

11 Q So, if you turn to Page 2 and I just have a few
12 more questions.

13 A Yes.

14 Q It says, and again, this is Mr. Clark's report.

15 A Correct.

16 Q But it says, Mental present, oriented person,
17 oriented time, oriented place within normal limits?

18 A Uh-huh.

19 Q That would seem to conflict with your testimony
20 that Mr. McCall was acting erratically?

21 A Well, I mean, you can still know where you are.
22 Because literally all we do is ask, Do you know where you
23 are? Do you know who you are? And do you know what month
24 it is?

25 Q And then on Page 3.

JOSH ROBINSON-DIRECT BY MR. STROM

1 A Literally. Yes.

2 Q The top entry and the action and comment
3 section.

4 A Yep.

5 Q Says?

6 A Oriented to person, place, time and event.

7 Q Uh-huh?

8 A Uh-huh.

9 Q Complaining of pain all over.

10 A Uh-huh.

11 Q Out of his vehicle?

12 A Uh-huh.

13 Q But he said, Okay and cooperated.

14 Again, though your recollection is that he
15 was acting erratically?

16 A I believe my testimony was when we were in the
17 back of the ambulance after we had already immobilized him
18 and got him into the back of the ambulance.

19 Q Do you recall to any degree of specificity his
20 injuries?

21 A No.

22 Q Okay.

23 A I can go off this report but just off the top of
24 my head, no.

25 Q It's all right. My final questions, if you'll

JOSH ROBINSON-DIRECT BY MR. STROM

1 turn to what is Page 5, it's actually listed as Page 2 of
2 the authorization signature?

3 A Correct.

4 Q Again, this is Greenville County EMS document?

5 A Correct.

6 Q Is that to the best of your recollection
7 Mr. McCall's signature?

8 A Yes, but that would have been Gary obtaining
9 that.

10 Q Okay.

11 A So, I would have obtained--

12 Q But you don't recall Gary signing -- or Gary
13 wouldn't, in the normal course of things, sign that?

14 A No. No.

15 Q Okay. It would be--

16 A If anything --

17 Q -- or unable to sign?

18 A Correct. If the patient is unable to sign, we
19 obtain a signature from the receiving facility's nurse.

20 Q Okay.

21 A Who signs on the patient's behalf.

22 Q So, it's either going to be Terry McCall or--

23 A Or --

24 Q -- or the nurse?

25 A Or -- yeah, another party that is associated

JOSH ROBINSON-CROSS BY MR. OVERBY

1 with his medical care.

2 Q Okay.

3 No further questions, thank you.

4 MR. OVERBY: Judge, I just have a couple of
5 questions.

6 THE COURT: Yes, sir.

7 CROSS-EXAMINATION

8 BY MR. OVERBY:

9 Q Mr. Robinson?

10 A Yes, sir.

11 Q Do you recall supervisors -- a supervisor of
12 yours testifying in the proceedings?

13 A Uh-huh. John James.

14 Q Lieutenant John James?

15 A Correct.

16 Q And do you recall -- you mentioned Sally Clark
17 earlier?

18 A Right.

19 Q Can you just say who Sally Clark is?

20 A Sally Clark is one of the assistant directors.
21 I think she's a Deputy Director of Greenville County EMS.
22 She, I believe, was called upon to actually bring the
23 physical copies of our patient care reports to the court
24 that day.

25 Q To the best of your knowledge, is she the

JOSH ROBINSON-CROSS BY MR. OVERBY

1 custodian of records of those reports?

2 A To the best of my knowledge.

3 Q Okay. And Lieutenant James reviews your
4 reports?

5 A Occasionally he will.

6 Q Okay.

7 A Yeah, for quality assurance purposes.

8 Q Okay. But you were not asked to put those
9 reports into evidence, correct?

10 A I don't think I was.

11 Q Okay. All right. Do you remember if those
12 reports were in evidence or not when you saw them? If you
13 don't remember, that's okay.

14 A I can't.

15 Q Okay.

16 A I can't say with any certainty.

17 Q With regards to -- with regards to some your
18 testimony on this, you've reviewed the affidavit?

19 A Correct.

20 Q Correct?

21 A Yes.

22 Q That's my affidavit, I note that I'm the one
23 who's on there.

24 A Right. That's very accurate as far as the best
25 of my recollection.

JOSH ROBINSON-CROSS BY MR. OVERBY

1 Q Okay. And those factors include, essentially,
2 what the back of your ambulance looks like --

3 A Correct.

4 Q And what Mr. Clark's role would have been?

5 A Right.

6 Q Was at the day of this incident?

7 A Correct.

8 MR. OVERBY: I have no further questions.

9 THE COURT: Any follow up, Mr. Strom?

10 MR. STROM: None, Your Honor.

11 THE COURT: Okay. All right, good enough.

12 Thank you, sir, you may step down.

13 THE WITNESS: Would you like me to just leave
14 these up here?

15 THE COURT: Yes, sir, please.

16 MR. STROM: Have they been entered as exhibits
17 for this hearing?

18 THE COURT: I don't know. What I tell you to
19 do, go take a look at it and see what has been
20 entered and what has not. If they're documents that
21 need to be entered, then y'all can enter them by
22 acclimation or consent. And while you're at it, give
23 me the transcripts that you brought in.

24 MR. STROM: And I can email you a copy of the
25 transcript. I'm sorry, if--

JOSH ROBINSON-CROSS BY MR. OVERBY

1 THE COURT: No, that's okay.

2 MS. DARWDY: Your Honor, Mr. Robinson is under
3 subpoena so he would like to know if he can be
4 relieved?

5 THE COURT: Yeah.

6 You're okay, he can go, Mr. Strom?

7 (There was no response.)

8 THE COURT: Yes, we'll take silence is
9 acquiescence. Thank you for being here.

10 MR. STROM: I'm sorry, Your Honor.

11 THE COURT: That's okay.

12 MR. OVERBY: Judge.

13 THE COURT: Yes, sir.

14 MR. OVERBY: I understand that, in terms of the
15 ministerial proceeding, obviously, so it's kind of a
16 little unorthodox manner. The only thing that I
17 wanted to point out, because I think that there's a
18 little bit of a issue about when that medical report
19 came into evidence.

20 THE COURT: Yes, sir.

21 MR. OVERBY: I refer to the record with regards
22 to A Part B-2 of Page 183 dealing with Ms. Sally
23 Clark, proceeding through Page 188, specifically to
24 118 of the record --

25 THE COURT: Right.

JOSH ROBINSON-CROSS BY MR. OVERBY

1 MR. OVERBY: -- with regards to Lieutenant John
2 James. At that point State's Exhibit No. 26, 27, 28,
3 which I believe was the extent of the
4 cross-examination was handled there. And that's when
5 Ms. Drawdy actually moved those into evidence. And
6 Mr. McCall did not have an objection at that time.

7 THE COURT: Okay. All right.

8 Mr. Strom, do you take any exception to that
9 representation?

10 MR. STROM: No, Your Honor.

11 THE COURT: Okay. I think this record reflects
12 that those documents that were referred to in the
13 most recent testimony, in the reconstruction hearing
14 today, those documents were actually introduced by
15 Sally Clark. They were authenticated and introduced
16 through her without objection.

17 MS. DARWDY: Your Honor, the record does reflect
18 that they were authenticated through Sally Clark,
19 they were introduced with some -- after additional
20 testimony by Lieutenant James while he was on the
21 stand.

22 THE COURT: Okay.

23 MS. DRAWDY: You specifically, and the record
24 show this --

25 THE COURT: Yes, I understand.

JOSH ROBINSON-CROSS BY MR. OVERBY

1 MS. DRAWDY: Specifically requested whether
2 Mr. Overby was moving them into evidence and he said,
3 Not at this time.

4 THE COURT: Okay. Authenticated by Ms. Clark,
5 moved into evidence by the next witness.

6 MR. OVERBY: Correct, Your Honor.

7 THE COURT: And the record reflects that.

8 MR. OVERBY: Yes, Your Honor.

9 THE COURT: Yes. Okay, good enough.

10 MS. DRAWDY: And, Your Honor, I believe we have
11 an exhibit, if we could let her mark.

12 THE COURT: Okay.

13 That's Court's Exhibit what?

14 THE COURT REPORTER: Eleven.

15 THE COURT: Eleven.

16 MS. DRAWDY: Which was State's Exhibit 28 during
17 the trial.

18 THE COURT: Okay.

19 (WHEREUPON, Court's Exhibit No. 11 was marked
20 for identification and received into evidence.)

21 THE COURT: Okay, good enough.

22 Yes, sir.

23 MR. STROM: Your Honor, we call Tommy Brooks.
24 Call Corporal Brooks to that stand.

25 THE CLERK: Corporal Brooks, please place your

TOMMY BROOKS-DIRECT BY MR. STROM

1 left hand on the Bible, raise your right hand.

2 TOMMY BROOKS, after being duly sworn,
3 testified as follows:

4 THE CLERK: Please be seated, state your name
5 for the record.

6 THE WITNESS: My name is Tommy Brooks. I'm
7 loud. I'm a preacher so I can be loud.

8 DIRECT EXAMINATION

9 BY MR. STROM:

10 Q Mr. Brooks, how long have you been with the
11 highway patrol?

12 A As of today, 21 years.

13 Q And you responded to the wreck involving
14 Mr. McCall and Mr. Suddeth? I'm sorry, you're a member of
15 the MAIT Team?

16 A Yes, sir, that is correct.

17 Q Okay. And how long you been a member of the
18 MAIT Team?

19 A Been an active member of MAIT since 2008. I
20 have been a MAIT associate since 2001.

21 Q And what was your capacity in investigating the
22 accident involving Mr. McCall and Mr. Suddeth?

23 A In this particular event it was just the
24 condition of the vehicle. I was called in to do a
25 mechanical examination of his vehicle.

TOMMY BROOKS-DIRECT BY MR. STROM

1 Q And do you recall if -- with respect to your
2 testimony, you were qualified as an expert?

3 A Yes, sir.

4 Q And do you recall the field?

5 A Accident reconstruction in general.

6 Q And what is -- do you recall during your
7 testimony that you determined how the accident occurred?

8 A Yes, sir.

9 Q And then if you'll --

10 Judge, may I approach the witness with my
11 copy of the transcript?

12 THE COURT: Sure.

13 BY MR. STROM:

14 Q So, missing portion of your testimony that we're
15 trying to reconstruct begins on Page 344. If you would
16 like to refer to a few pages ahead of that to try to jog
17 your memory as to what was being testified to.

18 A Yes, sir. (The witness complies.) All right,
19 sir.

20 Q Do you recall -- so at that point in the
21 testimony, you had just stated that you had inspected the
22 car?

23 A Yes, sir.

24 Q Mr. McCall's vehicle?

25 A Yes, sir.

TOMMY BROOKS-DIRECT BY MR. STROM

1 Q Made a determination that there weren't any
2 operable brakes other than the emergency brake?

3 A That is correct.

4 Q Do you recall there being any objection made to
5 that conclusion?

6 A No, sir.

7 Q To your conclusion?

8 A No, sir.

9 Q You don't recall Mr. Erwin objecting to the
10 scope of that opinion as beyond that of a accident
11 reconstructionist?

12 A No, sir.

13 MR. STROM: Your Honor, I don't have any other
14 questions at this point.

15 THE COURT: Okay.

16 All right, questions from the State?

17 MR. OVERBY: None from the State, Your Honor.

18 THE COURT: Okay, thank you, appreciate you
19 being here. Thanks.

20 Any objection to this witness being excused?

21 MR. STROM: No, Your Honor.

22 MS. DARWDY: No, Your Honor.

23 THE WITNESS: Thank you, Judge.

24 THE COURT: Have a great day, thank you for
25 being here.

JAKE ERWIN-DIRECT BY MR. STROM

1 MR. STROM: If Your Honor's ready, the defense
2 would call Mr. Jake Erwin.

3 THE COURT: Sure.

4 JAKE ERWIN, after being duly sworn,
5 testified as follows:

6 THE CLERK: Please be seated, state your name
7 for the record.

8 THE WITNESS: My name is Jake Erwin.

9 DIRECT EXAMINATION

10 BY MR. STROM:

11 Q Mr. Erwin, just provide us some background, how
12 long -- at the time of this trial back in 2012 -- or
13 excuse me, 2015, how long had you been practicing law?

14 A At that point I would have been practicing law
15 for four years.

16 Q And if you could provide us with some background
17 as to how you came to be appointed in this case?

18 A Okay. So, at the time I worked for the Public
19 Defender's Office here in Greenville. And I would have
20 been working for the Public Defender's Office since 2011
21 here in Greenville. I was at the Public Defender's Office
22 in Cherokee County for a year before that. So, at that
23 point, my entire career had been appointed criminal work.

24 That morning, I was in plea court down in
25 Courtroom 8. Going about my normal business of dealing

JAKE ERWIN-DIRECT BY MR. STROM

1 with clients that were there for guilty pleas, going over
2 discovery, all the normal stuff that I do on plea day with
3 a long list of clients. One of our office managers came
4 into the courtroom and grabbed me and said that Judge
5 Stilwell had said something about getting the first public
6 defender that you can see and bring him to my chambers,
7 and that just happened to be me.

8 So, I went back in chambers and the
9 prosecutors were back there and the Judge was back there.
10 And it was explained to me that Mr. McCall's appointed
11 counsel at the time, who was Randy Chambers, had just been
12 relieved and that they were still going to go forward with
13 the trial, if they could. And then Judge Stilwell was
14 appointing me as standby counsel at that point to sit with
15 Mr. McCall, who at that point wanted to represent himself.
16 To sit with Mr. McCall to do -- fulfill the duties of a
17 standby counsel. Which generally, are to just kind of be
18 there to provide advice, if asked. Kind of help the
19 defendant who is representing himself get through the
20 procedure. You know, just kind of make sure that they
21 stand up at the right time and say somewhat the right
22 thing but not to really give much advice or take over
23 questioning.

24 Although Judge Stilwell, I do remember
25 said, If at any point you feel like it's necessary for you

JAKE ERWIN-DIRECT BY MR. STROM

1 to jump in, go for it.

2 And that he was going to give me a lot of
3 leeway to kind of just handle the situation from a defense
4 perspective as best as I thought I could. So, that's how
5 I got involved in this case. And we literally came back
6 out and The State called their next witness. So, I was
7 just kind of at that point, just kind of rolling.

8 At that point, I had tried a whole lot of
9 cases. It was certainly not by any means my first
10 criminal trial, it's not my first felony DUI trial. It
11 was -- from that point of view I was in my comfort zone, I
12 had done it a lot. I think at that point -- I remember
13 laughing because I got appointed to this case, it was
14 something like that three for four terms of court in a
15 row, I had tried a case. And I was finally, okay, great,
16 I get a break this time around. And as soon as I thought
17 that, boom, I was sitting right there.

18 So, I was in my comfort zone but at the
19 same time I wasn't prepared. I had not prepared for the
20 trial. So, you know, I was shooting from the hip.

21 Q Okay. So, you had, obviously, no prior
22 knowledge of anything that happened in this case regarding
23 earlier hearings seeking to relieve Mr. Chambers or other
24 cases or anything to do with discovery or any issues in
25 this case?

JAKE ERWIN-DIRECT BY MR. STROM

1 A No, I mean, it had been explained that Randy had
2 been relieved. And I got a very bare bones, sort of
3 skeleton outline of how -- of where we were in the trial.
4 I mean, but there were times, like, I remember the first
5 time -- I don't remember if it was Mr. Overby or
6 Ms. Drawdy, but somebody had a picture and was showing it
7 to the jury and I had to ask that we approach. Because I
8 didn't know if it was in evidence or yet or not. So, I
9 didn't know whether I needed to object or not at that
10 point. So -- but yeah, I did not have a lot of knowledge
11 of what had happened before that point.

12 Q And then -- but you did have experience at that
13 point in your career in dealing with -- you said dealing
14 with felony DUIs, so I assume medical reports, expert
15 witness testimony, accident reconstruction testimony,
16 things of that nature?

17 A Yeah, all those things are things that at some
18 point or another I had dealt with.

19 Q So, you wouldn't have felt comfortable making an
20 objection if you thought it warranted?

21 A Oh yeah.

22 Q And Judge Stilwell specifically advised you or
23 instructed you to feel free to interject or relative to a
24 normal stand-by counsel situation?

25 A Right. And I think, if I remember correctly, it

JAKE ERWIN-DIRECT BY MR. STROM

1 was that he was appointing me as standby counsel but was
2 going to give me a lot of leeway as far as -- as a defense
3 attorney, what I thought needed to be done, that I could
4 do it. And then, I do remember that not far into the
5 trial, it might have been the first or second witness that
6 I was here for, I had -- Mr. McCall and I had a quick chat
7 and it was decided that I had to take a little bit more of
8 an active role at that point. Essentially, was going to
9 be trying the case from that point forward.

10 Q You don't have a specific recollection as to
11 what witness that may have been?

12 A No. And I know that it was pretty quick but
13 that's, you know, I don't have any specific recollection
14 of when that would have been.

15 Q There's been some questions asked of
16 Mr. Robinson, EMS, were you in the courtroom?

17 A Uh-huh.

18 Q Do you recall ever lodging an objection to
19 Exhibit 28, State's Exhibit 28?

20 A That's his record, his report--

21 Q And I can --

22 My I approach the witness, Your Honor?

23 THE COURT: Yes, sir, absolutely.

24 BY MR. STROM:

25 Q This is State's Exhibit 28, but it's Court's

JAKE ERWIN-DIRECT BY MR. STROM

1 Exhibit 11 for the purposes of this hearing.

2 A Do I remember objecting to this document coming
3 into evidence?

4 Q Correct.

5 A No. I mean, I don't remember whether I did or
6 not. The specifics -- I mean, like I said, I had not
7 prepped for the case so I was kind of just shooting from
8 the hip. So, I don't remember whether I would have. Or
9 whether or not I did or not with that.

10 Q Do you remember lodging any sort of objection to
11 Mr. Robinson testifying to a report written by his partner
12 who was not present?

13 A I mean, it seems to me that I very likely would
14 have made that objection.

15 Q Okay. Turning to Mr. Robinson's testimony, and
16 I'll hand you a copy of the transcript here in just a
17 moment. Actually, if you could for me, if the Court
18 Reporter will hand you the affidavit for Mr. Robinson. I
19 believe it is Court's Exhibit --

20 THE COURT REPORTER: It's four.

21 MR. STROM: Four. Thank you.

22 BY MR. STROM:

23 Q Do you recall The State attempting to qualify
24 Mr. Robinson as an expert in some kind of level of drunk
25 diagnosis?

JAKE ERWIN-DIRECT BY MR. STROM

1 A With all the many caveats that I've given, now
2 that I see their summary and everything, I do remember
3 somewhat that that happened.

4 Q And again, bearing in mind some of the
5 circumstances under which you came into representing
6 Mr. McCall, and giving your experience, if that summary is
7 correct in the fact in some respects it says you made the
8 objection or Mr. McCall made the objection, Mr. Robinson
9 was not qualified as an expert. That affidavit says that
10 you did not subsequently object to, essentially, The State
11 eliciting testimony from Mr. Robinson that covered the
12 same ground as his expert witness statement?

13 A Right. So, what I remember, and again this all
14 sort of through a very heavy -- this is just my practice.
15 And in getting ready for this hearing I went over the
16 affidavits and the summary with Ms. Drawdy. In going
17 through all that, best way I can put this is I know I
18 would have objected to him being qualified as an expert in
19 that area. And it seems like from the summary that we
20 agreed that I did. If he then, subsequent to that
21 objection being made and sustained, if he then started
22 testifying -- giving testimony as if he was an expert, I
23 have a really hard time believing that I would not have
24 objected to that. I think that I probably would have been
25 all over that one. Because that's not unusual. This

JAKE ERWIN-DIRECT BY MR. STROM

1 is -- we're getting into sort of style and tactics and
2 stuff like that now, but it's pretty usual for someone --
3 for a law enforcement official who is testifying to get
4 into expert territory. I mean, that's sort of line is
5 something that in a criminal trial of this nature, we
6 all -- both prosecutors and defense attorneys kind of
7 dance around. And so, I would have been very conscious of
8 that line. And that's something that, as a general
9 practice when I'm trying a case, I'm really paying
10 attention to. So, I find that hard to believe that I
11 would have missed that. But again, I don't specifically
12 remember.

13 MR. STROM: Your Honor, may I approach the
14 witness?

15 THE COURT: Yes, sir.

16 BY MR. STROM:

17 Q I'm going to hand you Court's Exhibits 5, 6, 7
18 and 8. Starting with Court's Exhibit 5, which is Tommy
19 Brooks' affidavit. If you can, review that for me and let
20 me know when you finish.

21 A Just the first one?

22 Q Yeah--

23 A I'm done with the first one.

24 Q Okay. Having reviewed that, do you recall sort
25 of the scope of Corporal Brooks' expertise as a member of

JAKE ERWIN-DIRECT BY MR. STROM

1 the MAIT team?

2 A I mean, yeah, it seems like what was in the -- I
3 mean, having had MAIT team members testify before, it
4 seems consistent with what the scope usually is. This all
5 sort of rings true with what's in the affidavit.

6 Q Have you ever objected to the scope of their
7 expertise with respect to limiting acts of reconstruction
8 to physics of the accident as opposed to the mechanical
9 causes?

10 A Have I ever? Probably.

11 Q As a general practice?

12 A I mean, again, this is the same thing that I was
13 just talking about with Robinson. When you have someone
14 in law enforcement who is testifying and they're
15 testifying either as an expert or they're getting close to
16 that line, that's something that I usually pay very close
17 attention to. And I'm usually eager to object to and
18 usually try to make sure that witness knows that I'm
19 watching them as far as they get to that line, so.

20 Q But to be fair you have no specific
21 recollection--

22 A Absolutely not, yeah.

23 Q Do you recall approximately how long your
24 cross-examination was?

25 A I have no idea.

JAKE ERWIN-DIRECT BY MR. STROM

1 MR. STROM: Beg the Court's indulgence for a
2 moment.

3 THE COURT: Yes, sir.

4 BY MR. STROM:

5 Q The affidavit states that, I believe it is, that
6 you conducted the cross-examination but then refers to
7 Mr. McCall doing the questioning. Do you have any
8 recollection as to whether you both did the questioning?
9 I realize that Judge Stilwell made some accommodations.

10 A No, I have no recollection as to how that would
11 have worked out. And, you know, I just now, reading this
12 affidavit, realized that it says both. But again, I don't
13 remember.

14 Q Okay. If you'll turn to Robert Suddeth's
15 affidavit.

16 A Yes.

17 Q Which I believe is Court's Exhibit number -- it
18 should be marked.

19 A It's Court's Exhibit No. 6 for this hearing.

20 Q Okay. If you'll let me know when you've
21 reviewed it.

22 A Okay.

23 Q It states that there's an objection made there,
24 could you sort of flesh that out for us? I realize that
25 he's the victim in this case, do you recall with any

JAKE ERWIN-DIRECT BY MR. STROM

1 degree of specificity the level of impairment or the kind
2 of suffering that he was describing that led you to
3 object.

4 A I remember from the facts that I know about the
5 case, being shocked that Mr. Suddeth survived. So,
6 personally, not that I remember but as a person I remember
7 being like, you know, amazed at the amount of pain and
8 suffering that he must have gone through to still be
9 standing here and testifying at that trial.

10 Now, having said that, as a defense
11 attorney, I'm obviously thinking about that the jury might
12 go through that same thought process, and in advocating
13 for Mr. McCall, I'd like to stop that. Because I don't
14 want them to identify with the victim anymore than
15 necessary because that's not really probative to the
16 elements that The State has to establish in the trial, but
17 absolutely can lead the jury to feel bad for the victim or
18 to want to help the victim and sometimes that can lead to
19 them voting for guilty.

20 So, that is the line of testimony that I
21 would have most likely jumped all over. And I can see
22 here when I, in this summary, when he said that, you know,
23 I would have -- if I had died that day I would have lived
24 a full life. Like I can hear that statement, like, in my
25 head I'm already half way up out of my seat objecting to

JAKE ERWIN-DIRECT BY MR. STROM

1 that. Because I have no idea where the next couple of
2 sentences are going in that testimony. And it's not
3 relevant and really bad for my client. So. . .

4 Q Do you have any recollection as to how -- you
5 said you can almost feel the sentence coming. Do you have
6 any recollection as to how long that kind of testimony or
7 how lengthy that kind of testimony was? Either before you
8 objected or did The State come back around to it after the
9 objection?

10 A Judging from the summary, which I have, my
11 affidavit says that I don't really remember anything other
12 than what happened here. And this seems pretty right. It
13 seems like it would have gotten -- like I said, it's -- he
14 would not -- I would not -- I can't imagine that I would
15 have let him get much further than about three words into
16 that before I would have jumped up and said something
17 about it.

18 Q So, your recollection is that it was a single
19 sentence or a paragraph, sort of answer, from the
20 Defendant before you objected? Trying to get a sense of
21 whether it's a single reference or whether it was a
22 multiple, you're having to object over and over again to
23 prevent that testimony.

24 A To answer that question, I don't remember. You
25 know, I -- I would like to think that I would have gotten

JAKE ERWIN-DIRECT BY MR. STROM

1 on that one the first time. But, you know. . .

2 Q And policed it from there?

3 A Yeah.

4 Q Then I'm sorry to take this out of order but
5 going to Dr. Lance on Page 357 --

6 Your Honor, I'll approach with my copy of
7 the transcript.

8 THE COURT: Sure.

9 BY MR. STROM:

10 Q On Page 357 Mr. McCall makes an objection. You
11 stated earlier that you, essentially, taken over
12 representation at some point fairly early on in the trial.
13 This is now day three, do you recall if there was any
14 further argument done regarding this objection?

15 A Give me a second. Let me --

16 Q Yeah, feel free to read the context.

17 A I don't remember whether there was more argument
18 than that or not. I honestly don't remember much other
19 than what I'm reading here.

20 Q And if you'll flip to the next page for me is
21 where her testimony ends.

22 A Uh-huh.

23 Q Do you recall -- and you were in the courtroom
24 for this. She had talk about several of the other drugs
25 that he had, the initial screen came back positive for.

JAKE ERWIN-DIRECT BY MR. STROM

1 Do you recall objecting to any of that? Do you have a
2 specific recollection of an objection?

3 A I don't have a specific recollection of that,
4 no.

5 Q Do you have a recollection of there being
6 anymore objections, or just that single one line by
7 Mr. McCall during Dr. Lance's testimony?

8 A I don't. I mean, it doesn't mean that there
9 weren't but I don't, so.

10 Q Turning to the directed verdict argument was
11 also not transcribed, do you recall the specific grounds
12 you raised when making the directed verdict motion?

13 A No, I don't. If I had to guess it was probably
14 just my kind of like standard, let me get this on the
15 record directed verdict motion. And that's just because
16 again, I wasn't--

17 Q Can you provide us with an example of that?

18 A Oh, yeah, it's been a while but. Move --
19 defense moves for a directed verdict, The State has not
20 established any evidence to prove any of the evidence --
21 or any of the elements that are required for a conviction
22 in this case. Or something like that.

23 Q Did you touch on any of the specific elements
24 for felony DUI, great bodily injury?

25 A I don't remember what I did in this case. But

JAKE ERWIN-DIRECT BY MR. STROM

1 if I was doing that directed verdict motion, like I said,
2 I just kind of get it on the record directed verdict
3 motion. I try to stay away from being too specific
4 because I'm just trying to get the record set and let
5 y'all at appellate defense have a little bit of room to
6 work if there's anything there. I don't really -- I want
7 to try -- unless -- if I have the grounds that I think
8 it's going to be granted on, I will get into that specific
9 thing and try to fight for it. But if I don't, I
10 generally just kind of make sure I don't get too specific
11 because I want the record to be as protected as I can let
12 it be.

13 Q Well, certainly appreciate that. Do you recall
14 renewing the motions that were previously made?

15 A I really hope I did that, yeah. I mean --

16 Q It's in the --

17 A -- that's an essential part of a directed
18 verdict motion, so yeah.

19 Q And part of it is in the record --

20 A Okay.

21 Q But do you have any specific recollections, any
22 additional arguments made to those renewals? Perhaps with
23 respect to Mr. Robinson's expertise or any other area?

24 A No, I don't. I mean, I don't. I'm sure that I
25 would have done that but as far as how much I would have

JAKE ERWIN-CROSS BY MR. STROM

1 talked about it or whether I just would have put it on the
2 record and left it there, I don't remember.

3 MR. STROM: That's all the questions I have for
4 Mr. Erwin, Your Honor.

5 THE COURT: Yes, ma'am.

6 MS. DARWDY: I have a few.

7 CROSS-EXAMINATION

8 BY MR. STROM:

9 Q Mr.~Erwin, I'm going to try to do this
10 chronologically.

11 A Okay.

12 Q Let's go back to when you first became involved
13 in this case.

14 A Okay.

15 Q Do you recall coming -- leaving the courtroom
16 with Mr. Chambers?

17 A Uh-huh.

18 Q And him turning over his file to you?

19 A Yes, yes.

20 Q That did happen?

21 A Yeah.

22 Q You went into a conference room, he turned it
23 over to you?

24 A We went out in the hall. And Randy -- Randy had
25 separated his file into a bunch of little yellow folders.

JAKE ERWIN-CROSS BY MR. STROM

1 And I don't know what the method was there. Because
2 everybody has their own thing. I do my files a certain
3 way, everybody does it differently. And we went out in
4 the hall and Randy gave me the yellow folders and like, I
5 mean, made a comment and then took off down the hall. So,
6 it wasn't much of a conference, it was sort of like here
7 you go, good luck.

8 Q But you were given an opportunity to get
9 everything before. . .

10 A In the sense that I got someone else's trial
11 file and it was completely unorganized, I couldn't make
12 any sense out of it, I had about 30 seconds to review,
13 yeah, I got it before.

14 Q I'm not throwing darts at what you did after
15 that.

16 A Yeah, yeah --

17 Q Just that it was --

18 A I physically had possession of a trial file that
19 was absolutely worthless to me.

20 Q And over the course of the trial you were in
21 conversation at various times with Mr. McCall --

22 A Yes.

23 Q -- and at counsel table, were you not?

24 A Yes.

25 Q And would you describe his participation and

JAKE ERWIN-CROSS BY MR. STROM

1 decision making and deciding and commenting on what was
2 going on in the courtroom to be fairly active?

3 A I feel, and sorry if I'm making this more
4 difficult than it has to be. I feel very uncomfortable
5 answering that question. I feel like that's getting close
6 attorney/client privilege that really --

7 And Judge, I really -- I really don't want
8 to answer that question.

9 BY MS. DRAWDY:

10 Q Okay.

11 A Because of attorney/client privilege.

12 Q Can I ask it in a way that wouldn't be -- make
13 you so uncomfortable. You did have discussions with him
14 at the table?

15 A Yes.

16 Q I'm not asking about the content of those
17 discussions.

18 A Yes.

19 Q And he was fairly active in participating in
20 discussions with you at the table?

21 A We talked at the table, yes.

22 Q Okay. And I wanted to ask you about,
23 specifically, about the objection to Mr. Robinson, the EMS
24 worker?

25 A Uh-huh.

JAKE ERWIN-CROSS BY MR. STROM

1 Q He was not law enforcement; right, he was EMS?

2 A Yeah, I guess when I said that earlier --

3 Q Okay --

4 A -- I guess, technically speaking, he's not law
5 enforcement. Forgive me for doing my defense lawyer thing
6 where I kind of lump them all together.

7 Q That's all right.

8 A I don't think he was expert in. . .

9 Q And I think that if -- well, I don't want to
10 comment on that but I think that if everyone in this room
11 has an opportunity to give a recollection of whether you
12 did make that initial objection --

13 A Uh-huh.

14 Q -- I think we can do that.

15 A Okay.

16 Q And find out what everybody says about that. It
17 is possible that if you did miss objecting, as you usually
18 would have, when Mr. Overby sort of asked the question in
19 a different way that I think he thought might have been a
20 different way, then you could have missed that because you
21 were talking to Mr. McCall. Is that possible?

22 A Sure.

23 Q Okay.

24 A But lots of things are possible.

25 Q That's all I'm saying. And I think we can ask

JAKE ERWIN-CROSS BY MR. OVERBY

1 everyone who was there, whether they recall whether you
2 did, in fact, make that follow up objection. But you
3 don't remember whether you did or not, is that fair to
4 say?

5 A I --

6 Q You don't --

7 A Ask that question again.

8 Q You don't actually recall whether you did that
9 or not?

10 A I don't actually recall.

11 Q Okay.

12 MR. OVERBY: I just want to. . .

13 CROSS-EXAMINATION

14 BY MR. OVERBY:

15 Q Mr. Erwin, so during the -- during Josh
16 Robinson's testimony, I know that you indicated that it's
17 kind of fuzzy and I can't really blame you because you got
18 thrown in a felony DUI trial right then and there. But
19 you remember me trying to -- or do you remember my
20 questioning trying to discuss Josh Robinson's -- the
21 importance of Josh Robinson knowing, particular, when
22 somebody might be under the influence of a particular
23 drug?

24 A I mean, that seems like a likely road you would
25 have gone down. I don't remember specifically remember

JAKE ERWIN-REDIRECT BY MR. STROM

1 that.

2 Q Okay. Do you remember me trying to ask and you
3 objected? Do you remember the objection at all
4 independently?

5 A No.

6 Q Okay. And you don't remember -- you don't
7 remember my rephrasing the question. Do you remember
8 having -- do you remember if there was a distinction
9 between the way that I phrased the question previously and
10 the way that I phrased it after the fact?

11 A Stan, I don't remember, like, the specifics of
12 that really at all.

13 Q Okay.

14 A That all sounds like stuff that could have, may
15 have happened.

16 Q Okay.

17 A But like. . .

18 Q No worries. No worries.

19 MR. OVERBY: I have no further questions.

20 THE COURT: Yes, sir.

21 MR. STROM: Just one or two questions, Your
22 Honor.

23 THE COURT: Yes, sir.

24 REDIRECT EXAMINATION

25

JAKE ERWIN-REDIRECT BY MR. STROM

1 BY MR. STROM:

2 Q Have you ever been found ineffective for failing
3 to miss an objection?

4 A That's a good question. I have not been -- to
5 my knowledge, I don't think I've been ineffective for
6 failing to miss an objection. But I got to explain that a
7 little bit. I was in the Public Defender's Office for six
8 or seven years. Handled thousand of cases for clients
9 that are very litigious. I ended up being on the other
10 end of PCR's many, many times. A lot of those hearings, I
11 don't -- I'm not really privy to what the ruling is, the
12 Judge takes them under advisement, I'm just a witness in
13 that case so it doesn't really ever get back to me whether
14 I was found ineffective or not. I am aware that I have
15 been found ineffective at least one time. I don't
16 remember exactly what that was for. And I don't think it
17 was for missing an objection, but who knows.

18 Q But particularly with respect to where you've
19 already won the objection the first time, your normal
20 practice would be to be aware that the solicitor may try
21 to rephrase questions in such a way so that it circumvents
22 the successful previous objection. That's something that
23 you're aware of as a matter of practice?

24 A Yeah. I mean, look get to the heart of all
25 this, it's possible that I missed that. I would be

JAKE ERWIN-REDIRECT BY MR. STROM

1 embarrassed if I missed that. And if I did miss that, I
2 am embarrassed. But, you know, people make mistakes,
3 there you go.

4 MR. STROM: Thank you, Judge, no further
5 questions.

6 THE COURT: Any questions?

7 (There was no response.)

8 THE COURT: Okay, thank you, Mr. Erwin, I
9 appreciate it.

10 MR. ERWIN: That's it? Okay.

11 THE COURT: All right, any other discussions,
12 issues we need to take up with respect to Mr. Erwin's
13 testimony?

14 MR. STROM: I don't have anymore, Your Honor.

15 THE COURT: Okay. So, the question outstanding
16 with respect to that specific line of questioning is
17 whether an objection was made or not to -- was it --
18 was it the EMS's -- the EMS officer's testimony that
19 dilated eyes was an indication of methamphetamine?

20 MR. STROM: Correct.

21 MS. DARWDY: That's consistent with it, that's
22 the second question.

23 THE COURT: Okay. And have we established
24 whether that question was answered and whether it was
25 asked?

1 MR. OVERBY: It was.

2 THE COURT: Okay. And is the recollection from
3 The State is that there was an objection that was
4 posed?

5 MR. OVERBY: I don't know -- I mean, I'm the one
6 who most directly remembers this entire situation, I
7 feel like.

8 MS. DRAWDY: And I have a specific recollection
9 about that because I was watching.

10 MR. OVERBY: But I don't know how you want to
11 take that up.

12 THE COURT: Well, I want you to tell me right
13 now as officers of the court. I don't want to put
14 you under oath because you're officers of the court.

15 MR. OVERBY: Sure, sure, okay. The way that I
16 recall this whole segment going was that Josh
17 Robinson testified that he was with EMS. That he had
18 a long standing -- that he had experience and
19 training in identifying particular types of drugs.
20 That he had to have as part of his experience with
21 dealing with patients in emergency medical
22 situations. Then he testified about the specific --
23 that he testified specifically about his arriving at
24 this accident scene in 2012. That he and Gary Clark
25 were in back of Medic 26, which was an ambulance.

1 That they specifically had or that they were there
2 on. That was corroborated by, I think, State's
3 Exhibit No. 28. That it's cramped in there. State's
4 Exhibit 28 was in evidence at that point in time. It
5 was in evidence through Sally Clark and John James,
6 previously. He was in the back of Medic 26, it's
7 very cramped, Gary Clark is working on Mr. McCall
8 over on one side, he's over here with--

9 MR. STROM: Your Honor, if we may?

10 THE COURT: Yes, sir.

11 MR. STROM: I plan on having Mr. Overby testify.
12 I was going to offer The State -- it might be easier
13 to put him -- put him on now and put him under oath
14 rather just having him--

15 THE COURT: He's an officer of the court, no
16 need to put him under oath.

17 MR. STROM: If it satisfies, Your Honor --

18 THE COURT: You can -- and I'm going to let you
19 cross-examine him on all that too.

20 You keep on, then you can take the stand --

21 MR. OVERBY: Sure.

22 THE COURT: -- and let Mr. Strom --

23 (WHEREUPON, everyone was talking over one
24 another.)

25 MR. OVERBY: The reason I remember this is this

1 was my witness. So, he testified basically that it
2 was really cramped, that they worked as a team and
3 he's inputting stuff live on a terminal, which is
4 where these reports are coming from. And that's
5 basically how that whole thing went. The idea was is
6 that I'm establishing presence sense impression.
7 That was the whole purpose of -- that Gary Clark
8 would have had presence sense impression. And the
9 exhibit was already in evidence. So, once that was
10 squared away and I had laid that foundation, I
11 started to ask that Mr. Robinson about pupil dilation
12 and what kind, in his opinion, what kind of -- if six
13 millimeters was, in fact, a very dilated pupil? Or
14 if that would be considered dilated pupils?

15 He responded, Yes.

16 And then I asked him what his opinion was with
17 regards to that. Which drew the objection from Jake
18 in that I had not qualified him as an expert at that
19 point. At that point I asked to qualify him as an
20 expert.

21 Which, Your Honor, said, No.

22 And then at that point, I simply asked, Do
23 dilated pupils -- can dilated pupils be consistent
24 with a drug classification? So, stepping away from
25 his opinion is essentially how I asked it. Rather

1 than asking about his opinion, I asked about drug
2 classifications and his knowledge on that. And he
3 said nothing about that. And that's how that line of
4 testimony went.

5 THE COURT: Okay. All right. Then I presume --

6 MR. OVERBY: The only thing I will add to that
7 is that after that there was not an objection. And I
8 don't want to put any words into Mr. Erwin's mouth--

9 THE COURT: I gotch you, I gotch you. So,
10 subsequent to him stating it was consistent with
11 methamphetamine, there was no objection at that
12 point?

13 MR. OVERBY: That's my recollection.

14 THE COURT: All right. Okay. And remember you
15 just testified as an officer of the court.

16 And Mr. Strom, do you have questions that you
17 would like to ask him about that? He can take the
18 stand or you can do it from right there.

19 MR. STROM: He can stand right there, that's
20 fine by me.

21 So, you have specific recollection that as you
22 are asking -- trying to qualify Mr. Robinson as a
23 expert, that you essentially lost that battle? That
24 the Court said that he didn't have the necessary
25 skills, training or experience to give opinions as to

1 what drugs would cause someone's pupils to be
2 dilated?

3 MR. OVERBY: It wasn't as to that. What I lost
4 the battle on, I think, is from my recollection, is
5 that I started to ask for an opinion which drew the
6 objection. And then, which would have related to
7 this specific incident. But I did not ask for an
8 opinion with relations to his actual drug and his
9 ability as an expert to diagnose specific drugs.

10 MR. STROM: But you then came around and said,
11 Dilated, in your experience, training, expertise,
12 dilated pupils are consistent with methamphetamine
13 use? Essentially, what you were trying to get him to
14 testify to?

15 MR. OVERBY: Well, he said it, I didn't
16 specifically say it. I asked what drug
17 classifications would dilated pupils be consistent
18 with.

19 MR. STROM: He wasn't qualified as an expert and
20 it's your recollection--

21 MR. OVERBY: Sure.

22 MR. STROM: -- that he was not qualified as an
23 expert. There was no objection to that testimony
24 despite Mr. Erwin's testimony?

25 MR. OVERBY: My recollection is that there was

1 no objection to the rephrased question.

2 MR. STROM: Okay.

3 If that what he remembers, then that's what he
4 remembers, Your Honor.

5 THE COURT: Okay. Good enough.

6 MS. DRAWDY: Your Honor, may I offer my
7 recollection?

8 THE COURT: Yes, ma'am.

9 MS. DRAWDY: I particularly remember this.
10 Mr. Overby and I worked on this trial very hard
11 together. We knew it would probably be appealed and
12 it was actually my case, he came to help me on it.
13 The -- we knew that the doctor would also be talking
14 about the dilated pupils and what that meant. And
15 that is reflected in the record she did testify
16 exactly the same way that that was indicative of
17 methamphetamine.

18 I was paying very close attention to the
19 testimony because this was an important part of our
20 case. And I recall being surprised that Jake did not
21 object to the second question. So, I have a very
22 distinct memory about that that he did not object.
23 And I can -- so I do have a distinct memory of that
24 as well.

25 THE COURT: Do you recall the first objection?

1 MS. DRAWDY: Yes, sir.

2 THE COURT: Very distinctly?

3 MS. DRAWDY: Yes, very distinctly.

4 THE COURT: Okay.

5 MS. DRAWDY: And I was surprised he didn't
6 object to the second one. There was important
7 testimony that I paid very close attention to because
8 it interplayed with a witness that I was going to be
9 performing direct examination on.

10 THE COURT: Okay. All right. Had the doctor
11 already testified or was that the EMS provider
12 testified before the doctor, do you remember?

13 MS. DRAWDY: He testified before she did.

14 THE COURT: Okay.

15 MR. STROM: Your Honor, may I grab my copy of
16 the transcript?

17 THE COURT: Sure. As a matter of fact, I think
18 I got it.

19 MR. STROM: Well, Your Honor, you're welcome to
20 keep that, make it a Court's Exhibit if you want to.

21 THE COURT: No, I'm good. I'm good.

22 Let's -- we've been at it for a little bit,
23 let's take a break and we'll come back in and we'll
24 pick up right where we left off.

25 Mr. Strom, I'll give you the opportunity to read

1 through what you want when we come back in, okay.

2 MR. STROM: Okay.

3 THE COURT: What, let's say 10 minutes, okay.

4 MR. STROM: Thank you, Your Honor. Just for
5 planning purposes, it's just Mr. McCall after.

6 THE COURT: Okay.

7 MR. STROM: From our side.

8 THE COURT: Okay. Good. Fair enough.

9 MR. ERWIN: Judge, when we come back from the
10 break, is my presence necessary?

11 THE COURT: Y'all decide that. I think I'm
12 comfortable.

13 (WHEREUPON, a short break was taken.)

14 THE COURT: Okay, ready to proceed?

15 MR. STROM: Yes, Your Honor, I call Mr. Terry
16 McCall.

17 THE COURT: Yes, sir.

18 THE CLERK: Place your left hand on the Bible,
19 raise your right hand.

20 TERRY MCCALL, after being duly sworn,
21 testified as follows:

22 THE CLERK: Please be seated. State your name
23 for the record.

24 THE WITNESS: My name is Terry McCall.

25 DIRECT EXAMINATION

TERRY MCCALL-DIRECT BY MR. STROM

1 BY MR. STROM:

2 Q Mr. McCall, I'm going to streamline this just a
3 little bit. You've been here for the hearing, you've had
4 a chance to review the affidavit from the attorneys as
5 relates to Chris Stache, EMS responder. Are you largely
6 in agreement with that recollection? With the attorneys
7 recollection as to his testimony?

8 A Yes, sir, I'm in agreement with that.

9 Q Moving to Teresa Dwease, I apologize if I
10 butcher that name. Have you had a chance to review the
11 affidavits submitted by the attorneys regarding this
12 witness' testimony?

13 A I have.

14 Q And you're in agreement that that, to the best
15 of your recollection, reflects her testimony at trial?

16 A Yes, to the best of my recollection I do,
17 Uh-huh.

18 Q Turning to the next witness, Josh Robinson, have
19 you had a chance to review the affidavits submitted
20 regarding Mr. Robinson's testimony?

21 A Yes, sir, I have.

22 Q And I understand that, I guess, based on our
23 conversations, that you're in agreement with a significant
24 portion of his testimony?

25 A That's true, uh-huh.

TERRY MCCALL-DIRECT BY MR. STROM

1 Q But that there is an issue regarding his
2 objection that we've been discussing for which you have a
3 different recollection than that of the prosecution?

4 A That's true, it is different.

5 Q And so your recollection, and again, let me know
6 if I'm incorrect, your recollection is that you had asked
7 Jake to take over questioning of the emergency services
8 and the police officers at this point in the trial?

9 A I did.

10 Q Of Mr. Robinson's testimony?

11 A I did.

12 Q Your recollection is also that Jake successfully
13 or, excuse me, Mr. Erwin successfully objected to The
14 State accepting to qualify Mr. Robinson as an expert
15 witness?

16 A He did.

17 Q And then there's been conflicting testimony
18 presented as to whether or not Jake or you subsequently
19 objected when The State attempted to rephrase their
20 question. Do you have a recollection as to whether or not
21 The Defense, either you or Mr. Erwin, objected to this
22 testimony from Mr. Robinson regarding whether dilated
23 pupils were consistent with a particular class of drug?

24 A I do. Jake immediately jumped up and jumped
25 straight to his feet--

TERRY MCCALL-DIRECT BY MR. STROM

1 Q And that's a specific recollection that you
2 have?

3 A I do. He jumped straight to his feet and went
4 to arguing.

5 He hollered, Objection.

6 And went to arguing about it.

7 Q Turning to Corporal Brooks, have you had a
8 chance to review the affidavits submitted by the attorneys
9 with respect to Mr. Brooks?

10 A Yes, sir, I have.

11 Q And while you're able, do you agree with some of
12 the content? Do you have a different recollection than
13 that that's recorded in the affidavit?

14 A Yes, sir.

15 Q Do you recall -- do you have a specific
16 recollection that there was an objection as to whether or
17 not Corporal Brooks was qualified to testify regarding the
18 condition of the brakes on your vehicle?

19 A Yes, sir.

20 Q And to the best of your recollection, who made
21 that objection?

22 A Jake did, Mr. Erwin did.

23 Q And again, this is at the point in the trial
24 where you have, again, a fair degree of responsibility to
25 Mr.~Erwin as your standby counsel?

TERRY MCCALL-DIRECT BY MR. STROM

1 A That is true.

2 Q And, in fact, he conducted both the
3 cross-examination of Corporal Brooks and Mr. Robinson; is
4 that correct?

5 A That is true.

6 Q So, you have a distinct recollection that
7 Mr.~Erwin objected to the scope of Mr. Brooks testimony
8 regarding operable brakes?

9 A He did.

10 Q And just generally, as you reflect on the
11 conduct of this trial, is it your memory that Mr.~Erwin
12 would interject fairly freely, either with an objection or
13 questioning a witness?

14 A Yes, sir.

15 Q Do you recall that he did that?

16 A I do, uh-huh.

17 Q And that would be, in several instances, where
18 you begin a cross-examination or he did cross-examination
19 of a witness and he would always participate, correct?

20 A That is true, uh-huh. The Judge gave him the
21 leeway.

22 Q And then, like to turn to Dr. Lance's testimony.
23 There's been testimony today regarding the objection you
24 logged on Page 357 of the transcript.

25 Your Honor, is there a copy of the

TERRY MCCALL-DIRECT BY MR. STROM

1 transcript up there?

2 THE COURT: I have it right here, thank you. Do
3 you need it?

4 MR. STROM: Just briefly, if I may approach the
5 witness?

6 THE COURT: Yeah, sure. I'll give you all three
7 to find what you want.

8 BY MR. STROM:

9 Q Having you look at Page 357, beginning with Line
10 3. And, Mr. McCall, if you would read the preceding
11 couple of pages to get a sense of where that is in the
12 trial, please feel free to do so. Let me know when you're
13 ready.

14 A Okay. I'm ready.

15 Q Okay. Do you see that the transcript reflects
16 that it simply says, Objection, with no stated grounds?
17 Do you have a recollection to the contrary or recollection
18 that suggests that that, perhaps, is not accurate or a
19 full transcription of the objection?

20 A I do. I objected -- I said, Your Honor, the
21 record reflects something different.

22 Q And when you're referring to the record, are you
23 referring to the SLED drug reports that were entered into
24 evidence at your trial?

25 A Yes, sir, I was.

TERRY MCCALL-DIRECT BY MR. STROM

1 MR. STROM: And for the record, Your Honor, if
2 you'll just allow me one minute I can get you the
3 exhibit number for those.

4 THE COURT: Okay.

5 MR. STROM: I believe that will be State's
6 Exhibit, essentially, 35 through 42, that's including
7 the evidence bag chain of custody evidence log but
8 particular 41 and 42.

9 THE COURT: Yes, sir.

10 BY MR. STROM:

11 Q Are those the two exhibits that you're referring
12 to?

13 A Yes, sir.

14 Q Mr. McCall?

15 A It is.

16 Q And then other than the objection to Dr. Lance's
17 testimony regarding the initial drug screens, do you have
18 any memory to the contrary or disputes what's stated in
19 the affidavit?

20 A No, sir.

21 Q Turning to the final State's witness, Robert
22 Suddeth. You were in the courtroom when Jake Erwin
23 testified regarding the objection that he lodged to
24 testimony by Mr. Suddeth stating the impact of the
25 accident had had on his life or his reflections on the

TERRY MCCALL-DIRECT BY MR. STROM

1 accident. Do you have any, I guess, recollection to the
2 contrary as to -- to that objection? Do you recall it any
3 differently than Mr.~Erwin did?

4 A No, I don't, no.

5 Q And so, looking at that affidavit, again, the
6 affidavit of Mr. Suddeth, you are largely -- you're in
7 agreement with the factual recitation of it?

8 A Yes, sir.

9 Q Okay. Turning to the defense case, Mr. McCall.
10 The first witness, if you can explain, who Juliette Martin
11 was?

12 A She was my girlfriend at the time.

13 Q And she was called -- you called her as a
14 witness in your case. Have you had a chance to review the
15 affidavit from the attorneys?

16 A Yes, sir.

17 Q Detailing the testimony?

18 A I have.

19 Q Do you have -- are you in agreement with it, do
20 you disagree?

21 A I disagree with it.

22 Q And what areas do you disagree with the
23 affidavit?

24 A Well, it's got down here -- it's got that
25 Ms. Martin testified that she and Mr. McCall went to sleep

TERRY MCCALL-DIRECT BY MR. STROM

1 on the night of March the 2nd. And that would be
2 incorrect, it would be the 3rd.

3 Q Well, let's sort of try to set the timeframe
4 here. But the accident occurred on the evening of
5 March 4th?

6 A Yes, sir.

7 Q And then on March 2nd, do you agree that
8 Ms. Martin was in jail at that point?

9 A Yeah, it's stated on here that she--

10 Q So, you agree with their recollection?

11 A Yes, sir.

12 Q Was she released on the 3rd to the best of your
13 memory?

14 A Pardon?

15 Q Was she released from jail on the 3rd or the
16 2nd?

17 A It was over the morning.

18 Q So morning of the third?

19 A Uh-huh.

20 Q So, when they're referring to March 2nd to
21 March 4th and then the second reference on the night of
22 March 2nd, you believe that's actually March 3rd?

23 A Yes, sir.

24 Q And when the affidavit states that she woke up
25 and you were no longer in the room, that would be

TERRY MCCALL-DIRECT BY MR. STROM

1 referring to waking up on the 3rd?

2 A That is correct. No, the 4th.

3 Q Excuse me, the 4th?

4 A The 4th, yeah.

5 Q I'm sorry, the 4th.

6 A Yes, the 4th.

7 Q But other than that, you're -- other than the
8 date being the 2nd and the 3rd instead of the 3rd and the
9 4th, excuse me, I mixed that up. It's the 3rd and the 4th
10 instead of the 2nd and the 3rd. Other than that, though,
11 you are in agreement with the affidavit?

12 A Well, only to the point that where it goes on, I
13 think, this one or the other one about the medication.

14 Q Well, we have still have your affidavit--

15 A This is --

16 Q -- to go forward.

17 A Yeah.

18 Q Excuse me, the affidavit dealing with your
19 testimony?

20 A Well then, yeah, I guess, I'm in agreement with
21 it all but the fact she said he took the Ativan on the
22 night of March 2nd, I'm in disagreement with that.

23 Q So, you didn't take Ativan?

24 A Not on March the 2nd.

25 Q Okay. Turning to your -- excuse me, the

TERRY MCCALL-DIRECT BY MR. STROM

1 attorneys affidavit, their memory of your testimony, have
2 you had a chance to review it?

3 A Yes, sir.

4 Q And I understand from our discussions that you
5 have some objections to it or different recollection?

6 A Yes, sir, I do.

7 Q What -- if you can sort of begin at the start of
8 the summary of the testimony and explain your first area
9 of disagreement.

10 A Well, it's saying that McCall testified that on
11 the day before or on the day of the collision, Counsel
12 cannot recall but stated that he drove Ms. Martin and his
13 Ford Explorer to the pharmacy for a prescription. He
14 testified at some point that Ms. Martin gave him several
15 of her Ativan pills and he took them.

16 There was no several pills to it. There
17 were only two pills.

18 Q So, the several -- your recollection is that you
19 testified you were only given two pills?

20 A It was only two pills.

21 Q Then the next paragraph also states that
22 immediately before the accident, you told Ms. Martin -- or
23 excuse me, you testified that you were going to go out to
24 wash clothes. Your recollection, and correct me if I'm
25 wrong, is that you testified that you were going out to

TERRY MCCALL-DIRECT BY MR. STROM

1 eat?

2 A Went to get us something to eat.

3 Q Then having reviewed the remainder of the
4 affidavit summarizing your testimony, do you agree with
5 those remaining portions of it beginning on the third
6 paragraph continuing on the second page?

7 A No, sir. They said that I testified that the
8 beer cans that were found in the vehicle were ones that I
9 had picked up on the side of the road. That wasn't what I
10 said. It was behind the motel. There was a dumpster
11 sitting there, I picked them up.

12 Q But other than that, other than the location of
13 the how you collected the beer cans, it's, first of all,
14 no one is alleging -- no one's alleged in your case that
15 you were drinking?

16 A Yeah.

17 Q But other than the issue of where you picked up
18 the beer cans from, the rest of it, that remaining final
19 paragraph is -- final two paragraphs are -- you're in
20 agreement with those?

21 A Well, it's got here it says that Juliette Martin
22 had been asleep for several hours just prior to the time
23 of the collision. She had been waking up. I was asking
24 her what she wanted to eat.

25 Q So, you had some brief discussion then--

TERRY MCCALL-DIRECT BY MR. STROM

1 A Right.

2 Q --and then you went on your way.

3 A She then may have went back to sleep once I
4 left.

5 Q Okay. And then, in our discussions you voiced
6 some concerns as to when Caroline Hiskell left her
7 employment at the Court of Appeals?

8 A Court Administration.

9 Q Excuse me, Court Administration.

10 A Yes, sir, I do, uh-huh.

11 Q And specifically your concern is that she was
12 not a certified court reporter at the time that she signed
13 the certification form verifying the transcript?

14 A That's exactly right. Because the one I
15 received with the initial transcript was never signed.
16 And then in between me trying to find out if she was going
17 to be relieved or whatever, whatever was going on with the
18 court, she sent me a letter, and I have it over there,
19 that she was no longer a court official, a judicial
20 officer. And then a certification came in because you
21 guys had written her and explained that you needed a
22 certification.

23 Q So, you're concerned that the certification came
24 after she was no longer--

25 A Yeah, I believe so.

TERRY MCCALL-CROSS BY MS. MUNSON

1 Q -- allowed to certified transcripts?

2 A I'm not sure, I'm still trying to find that out.

3 Q Okay.

4 A But I believe -- I believe so.

5 MR. STROM: Your Honor, there's -- Terry and

6 I --

7 BY MR. STROM:

8 Q I know you've -- we've talked extensively but I
9 want to make sure, have I covered all the issues as it
10 relates specifically to the integrity of the transcript?

11 A Yes, sir, I think so.

12 MR. STROM: I have no further questions, Your
13 Honor.

14 THE COURT: Okay, cross-examination.

15 CROSS-EXAMINATION

16 BY MS. MUNSON:

17 Q Hi, Mr. Martin -- Mr. McCall. Golly, I'm sorry
18 about that. It's rude I didn't call you by the right
19 name.

20 A That's all right.

21 Q I'm Judy Munson with the solicitor's office, I
22 just have three little areas to talk to you about, okay?

23 A Okay.

24 Q All right, the first one is with the EMS guy,
25 Robinson. The testimony that came in through him about

TERRY MCCALL-CROSS BY MS. MUNSON

1 dilated pupils being consistent with methamphetamine all
2 of that, do you remember that part?

3 A Uh-huh.

4 Q All right. Did the doctor, the lady that
5 testified here earlier today, did she not testify to that
6 as well when she was on the stand in your trial?

7 A I think so.

8 Q Okay.

9 A And not sure if that's not 100 percent.

10 Q Okay, well it's a lot stuff to remember. If
11 that is in the record, would you have any disagreement
12 with that? That she did testify that dilated pupils are
13 consistent with meth use. Or meth -- like the effect of
14 having meth in your system. You wouldn't disagree that
15 she testified to that?

16 A I'm not going to say being for sure, I'm not for
17 sure.

18 Q Okay. But if it's in the record--

19 A If it's in the record --

20 Q -- then you accept it?

21 A I would accept her saying it, sure.

22 Q Okay. All right, thanks. I didn't ask that
23 very well, I'm sorry.

24 A That's all right.

25 Q Now, about Corporal Brooks, the trooper?

TERRY MCCALL-CROSS BY MS. MUNSON

1 A Uh-huh.

2 Q Now, there was -- Jake objected -- your
3 recollection is that Jake objected to him testifying about
4 the brakes on the car, that that was beyond the scope of
5 accident reconstruction. Do I have that right?

6 A Well, he objected, I think, to his expertise.

7 Q Okay. So, he objected to him being an expert at
8 all?

9 A Uh-huh.

10 Q All right. But the testimony did come in
11 anyway?

12 A Uh-huh.

13 Q Okay. And then one other thing then I'll be
14 done. When Dr. Lance was testifying about drugs in a
15 report that she was looking at, your recollection is that
16 you objected that what she was saying was incorrect.
17 Isn't that what you just said on the stand?

18 A Yeah, it was incorrect.

19 Q Okay. Now, there were two drug analysis, do you
20 recall that? One from SLED and one from Greenville
21 Hospital System.

22 A I do.

23 Q So, the one she was talking about was from
24 Greenville Hospital System.

25 A And that could be true.

TERRY MCCALL-CROSS BY MS. MUNSON

1 Q And it could be different than the one from
2 SLED?

3 A That's possible.

4 MS. MUNSON: Okay, thank you, very much, that's
5 all I have, Mr. McCall, thank you.

6 THE COURT: Mr. Strom, any additional questions?

7 MR. STROM: Nothing further, Your Honor.

8 THE COURT: Thank you, Mr. McCall, I appreciate
9 it, sir, you can step down.

10 THE WITNESS: You want me to leave this here?

11 THE COURT: Yes, sir, please.

12 Yes, sir, Mr. Strom, anything else, sir?

13 MR. STROM: I just renew my earlier objection.
14 I feel bad if I forgot to do so.

15 THE COURT: That's okay. I will say this, I
16 think your initial objection was just as to
17 Ms. Drawdy, I'll let you expand that to Mr. Overby,
18 too.

19 MR. STROM: Please, Your Honor. As well as to
20 Mr. Overby regarding the advocate witness rule,
21 essentially, it's Rule 3.7 State v. Sierra.

22 THE COURT: Okay. Good enough, good enough.
23 Thank you very much.

24 Anything The State needs to put on the record?

25 MS. MUNSON: Yes, Your Honor, just goes to show

1 I have no idea what I'm doing here, this is new to
2 me, but there are a couple more questions, I think,
3 in order to make a good record that should be asked
4 of Ms. Drawdy and of Mr. Overby.

5 THE COURT: Okay.

6 MS. MUNSON: If I may do that now?

7 THE COURT: Sure, you may.

8 MS. MUNSON: Y'all speak up so she can hear you.

9 MR. OVERBY: Okay.

10 MS. MUNSON: All right, Ms. Drawdy, with the
11 victim, Mr. Suddeth, the objections that were drawn,
12 it sounds like he just sort of spontaneously started
13 talking about If I die, my life would be full. And
14 then an objection was raised?

15 MS. DRAWDY: Yes.

16 MS. MUNSON: Okay. Did that go any further?

17 MS. DRAWDY: It did not, the question. And the
18 question I asked him is what is the last thing that
19 he -- I asked him if he remembered the accident?

20 And he said, No.

21 I said, What is the last thing you remember
22 before the accident?

23 And that is when he talked about having coffee
24 and making the remark. An objection was drawn.

25 MS. MUNSON: Was it sustained?

1 MS. DRAWDY: It was sustained. And I assured
2 The Court that that is not where we were headed with
3 our questioning. That was not something I had sought
4 to elicit. And when we moved on, we left that topic
5 all together and moved immediately into the map and
6 the route.

7 MS. MUNSON: Okay. And as to directed verdict
8 motions, do you have any independent recollection of
9 the directed verdict motions?

10 MS. DRAWDY: Just that they were very
11 perfunctory. There was really no detail given
12 specific to the lack of evidence, it was just stated
13 as a conclusion that taken in the light most
14 favorable to The State.

15 MS. MUNSON: Okay.

16 Nothing further, Your Honor.

17 THE COURT: Mr. Strom, any questions?

18 MR. STROM: I apologize, Your Honor, yes.

19 So, the objection -- so you were asking him what
20 his last memory was prior to the accident?

21 MS. DRAWDY: Yes.

22 MR. STROM: If he remembered the accident
23 itself?

24 MS. DRAWDY: Yes.

25 MR. STROM: Did his wife -- his wife testified,

1 correct, Mrs. Suddeth?

2 MS. DRAWDY: Yes, she did.

3 MR. STROM: You said he made the statement, did
4 she corroborate that he made the statement sometime
5 the morning before this happened?

6 MS. DRAWDY: I don't recall.

7 MR. STROM: And the daughter didn't testify,
8 correct?

9 MS. DRAWDY: The daughter did not testify.

10 MR. STROM: Is that -- she--

11 MS. DRAWDY: Now, the wife did corroborate that
12 he didn't remember the accident.

13 MR. STROM: But didn't she corroborate this sort
14 of morning of reflection by Mr. Suddeth? That he
15 was -- seemed somewhat blissful?

16 MS. DRAWDY: I don't believe she did.

17 MR. STROM: And so, your recollection is that
18 Jake objected and you sort of steered it back to the
19 brass tacks of here's your map, here's your route?

20 MS. DRAWDY: Yes. Yes.

21 MR. STROM: And then, consistent with Jake's
22 recollection, the directed verdict didn't necessarily
23 in detail, in any detail, address the--

24 MS. DRAWDY: Specifics of the case.

25 MR. STROM: Elements or the facts of the case?

1 MS. DRAWDY: Yes. Yes.

2 MR. STROM: Okay.

3 MS. DRAWDY: And if I may add, the purpose of
4 the discussion of --

5 Did I mess you up?

6 MS. MUNSON: No, I'm just--

7 MS. DRAWDY: The discussion of his physical
8 therapy was merely to show the protracted loss of the
9 member. How long he had to do physical therapy to
10 regain in his wonderful physical recovery.

11 MR. STROM: No further questions, Your Honor.

12 MS. MUNSON: Briefly for Mr. Overby on Corporal
13 Brooks--

14 MR. STROM: I'm sorry, Corporal Brooks?

15 MS. MUNSON: Tommy Brooks.

16 MR. STROM: Yeah.

17 MS. MUNSON: He was qualified as an expert in
18 accident reconstruction?

19 MR. OVERBY: Correct.

20 MS. MUNSON: And then you recall going into some
21 questions with him about the brakes of the car, the
22 mechanics of the car?

23 MR. OVERBY: Yes.

24 MS. MUNSON: Okay. And did that draw an
25 objection that you recall?

1 MR. OVERBY: I don't recall an objection as to
2 the vehicular examination as his qualifications. I
3 recall a substantial portion of cross-examination
4 taking place. And in my affidavit, I should note,
5 that it says that the cross-examination was conducted
6 by Jake Erwin. What I should note is that that was
7 actually an error. I apologize. My recollection is
8 Mr. McCall actually conducted that cross-examination.

9 MS. MUNSON: Okay.

10 MR. OVERBY: Dealing specifically with the
11 brakes.

12 MS. MUNSON: Did they both cross-examination
13 Corporal Brooks?

14 MR. OVERBY: My recollection is only Mr. McCall.

15 MS. MUNSON: All right. Well, since you said
16 that, is there anything else that you can think of
17 that you need to correct?

18 MR. OVERBY: Nothing else other than that.

19 MS. MUNSON: Okay.

20 THE COURT: All right, anything else we need to
21 put on the record?

22 MR. STROM: Nothing else, Your Honor.

23 MS. DRAWDY: Nothing else.

24 THE COURT: Okay. All right. Well, I
25 appreciate y'all being here and I appreciate y'all

1 assisting with the reconstruction of the record. I
2 recognize that the reconstruction isn't perfect. I
3 do believe that most of the substantive portions of
4 the record have been clarified. There do seem to be
5 a few outstanding issues which are subject to some
6 discussion and debate. The Court of Appeals can make
7 a determination as to whether those are relevant to
8 the issues on appeal. And whether if objections were
9 raised, what the impact on the case would be.

10 I'm not going to -- inasmuch as I am an
11 impartial observer and objective, I'm not going to
12 revisit any of the motions and rulings that may have
13 been made during the case. I think the record for
14 the most parts -- for the most part, stands for
15 itself. I will say just, again, as an officer of the
16 court who is recalling the record in this case and
17 recalling the conduct of this case, that in this case
18 when you read the transcript and in all the
19 objections that were made, in most instances it
20 seems, and even in the instances that have been
21 recalled here by the attorneys of record, most of the
22 objections lodged by the Defendant were granted.
23 That's in keeping with my judicial philosophy of when
24 you have a pro se litigant or someone who is in a
25 compromised position. And I routinely err on the

1 side of the defense. And you will see that some of
2 those objections that were made, I actually sustained
3 those objections. With the exception of the one that
4 wherein the doctor was relating what was on her
5 report. That's a matter of fact. If the objection
6 were, and the record doesn't reflect it, but if the
7 objection were, that that's not what the record
8 reflects, that's up to the jury to determine whether
9 the record reflects that or not. So, it's a matter
10 of fact, it's not a matter for the Court.

11 But I will say this, I will say this. Also, in
12 this case, you come upon cases as a judge from time
13 to time and you just wonder why the case is going to
14 trial. In this case, I tried to determine at the
15 outset what The Defense's position was. And I
16 listened for it intently throughout the entire trial.
17 There was never an articulation of an intelligible
18 defense or theory of defense in this case. The
19 evidence in this case, taken as a whole, was
20 overwhelming. If there were a directed verdict
21 motion that was made, clearly under the standard
22 articulated by the law, it was not appropriate for
23 directed verdict.

24 This was one of those cases where there was no
25 good reason for anybody to go to trial. The evidence

1 was absolutely overwhelming. It is very unfortunate
2 that the record was not full and complete in this
3 matter. I don't have any stake at what happens in
4 this matter. And if it's overturned, then that is
5 entirely fine by me. If it comes back to trial and
6 there's an acquittal, that is entirely fine by me.
7 But I will just state for the record, this is one of
8 those few cases that I've had in my career where the
9 evidence was incontrovertical [verbatim] and
10 overwhelming. Okay. Good luck to all of you.

11 MS. DRAWDY: Thank you, Your Honor.

12 MS. MUNSON: Thank you, Your Honor.

13 MR. STROM: Thank you, Your Honor.

14 (WHEREUPON, the proceedings were concluded.)
15
16
17
18
19
20
21
22
23
24
25

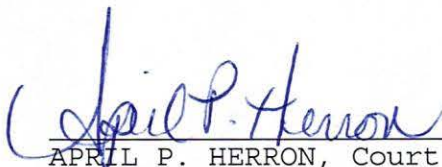
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

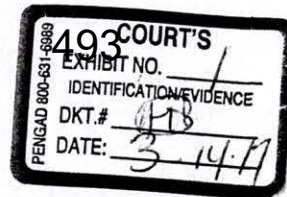
I, APRIL P. HERRON, Official Court Reporter for
the Thirteenth Judicial Circuit of the State of South
Carolina, do hereby certify that the foregoing is a true,
accurate and complete Transcript of Record of the
proceedings had and evidence introduced in the trial of
the captioned case, relative to appeal, in the Court of
General Sessions for Greenville County, South Carolina, on
the 14th day of March, 2017.

I do further certify that I am neither of kin,
counsel nor interest to any party hereto.

June 23, 2017



APRIL P. HERRON, Court Reporter



STATE v. TERRY MCCALL

Original Indictment #: 2012-GS-23-10242

Appellate #: 2015-001097

Record Reconstruction Summary

Witness: Tracy L. Lance, MD (State's Witness)

Position: Emergency Room Physician, Greenville Memorial Hospital

[Day 3, Page 358, Line 14]

DIRECT EXAMINATION BY: Sara Lee Drawdy

CROSS EXAMINATION BY: Terry McCall and by Defense Counsel, Jake Erwin

Objections during Testimony: None during the portions of the testimony that were not transcribed.

Evidence introduced: None

Summary of Testimony (that was not transcribed):

The majority of the direct examination of Dr. Lance was included in the record and the State would rely on the record as created until the above-referenced end to transcription.

Following the break in transcription, Dr. Lance was asked about the remaining three positive drug class results found in Mr. McCall's urine drug screen and the effects that those drugs have on the human body. She testified that each of the drugs for which there were positive results in the urine drug screen had impairing effects and that someone who was under their influence would have difficulty safely operating an automobile. This concluded the direct examination of Dr. Lance.

SLD JKE

Cross examination by Mr. McCall centered on whether he had been given some ginger ale prior to the time that his blood sugar had been tested in the ER. Dr. Lance responded that there was no record of that having happened.

SD JKE

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
 STATE OF SOUTH CAROLINA)
 _____)

AFFIDAVIT

Personally appeared before me Sara Lee M. Drawdy, who being duly sworn, says that she is an Assistant Solicitor with the 13th Circuit Solicitors Office and that she was one of the two prosecuting attorneys in the trial of Terry Edward McCall for Felony DUI Resulting in Great Bodily Injury, Indictment No. 2012-GS-23-10242, that occurred on May 12, 2015 through May 14, 2015. Ms. Drawdy also states that the within Summary of Testimony for Tracy L. Lance, MD, *supra* is her best recollection of the testimony given by Dr. Lance.

Sara Lee M. Drawdy
 Signature

Sworn to before me this
9 day of March, 2017.

Kelly Drawdy
 Notary Public for South Carolina
 My Commission Expires: 7.28.24

Sara Lee M. Drawdy (Bar# 1747)
 Print Name

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
 STATE OF SOUTH CAROLINA)
 _____)

AFFIDAVIT

Personally appeared before me, Jake Erwin, who being duly sworn, says that he is a Criminal Defense attorney, that he was with the Public Defender's Office in Greenville County in May of 2015, and that he participated as stand-by counsel for Terry Edward McCall during his trial for Felony DUI Resulting in Great Bodily Injury, Indictment No. 2012-GS-23-10242, that occurred on May 12, 2015 through May 14, 2015. Mr. Erwin further states that he does not recall anything about the testimony of Tracy L. Lance, MD.

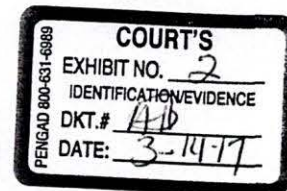
Jake Erwin
 Signature

Sworn to before me this
9th day of March, 2017.

S. Bradley Jollison
 Notary Public for South Carolina
 My Commission Expires: 12.30.24

Jake Erwin
 Print Name

(Bar# 79141)

**STATE v. TERRY MCCALL**

Original Indictment #: 2012-GS-23-10242

Appellate #: 2015-001097

Record Reconstruction Summary**Witness: Chris Stache** (State's Witness)

Position: Emergency Care Worker, Greenville County EMS

[Day 2, Page 207]

DIRECT EXAMINATION BY: Sara Lee Drawdy

CROSS EXAMINATION BY: No cross examination.

Objections during Testimony: None

Evidence introduced: None

Summary of Testimony:

Chris Stache testified that he was working as a Paramedic with Greenville County EMS on March 4, 2012 when he and Ryan Freeman were dispatched to a collision on SC-291 near Worley Road. He testified that they were riding in "Medic 9" and that they were the first EMS unit to arrive at the collision scene. Mr. Stache testified that when they arrived at the scene he immediately went to check on the occupant or occupants of the Red pick-up truck as Ryan Freeman went to check on the condition of the occupant or occupants of the other vehicle that was involved in the crash. He testified that an off duty fireman was leaning through the rear window of the truck, holding the head of the driver of the pickup truck.

Mr. Stache testified that it was apparent that this driver had very serious injuries. He testified that the dash had collapsed down on the driver. Mr. Stache testified that he was able to access the driver by entering the cab through the passenger door. He testified that the driver's pelvis

was broken and unstable. Mr. Stache testified that the driver was conscious and in a lot of pain, but that he was able to give his name (Robert Suddeth) and some medical history. He testified that he had to "bag" the victim because he was having difficulty breathing. Mr. Stache testified that the victim was entrapped in the vehicle for some time because the first crew from the fire department was not comfortable with removing the victim from the truck. Mr. Stache testified that his supervisor, Lt. James arrived at the scene and assisted with the extrication of the victim.

Mr. Stache testified that because the victim's condition was so serious, Lt. James rode in the back of the ambulance to assist with patient care as they transported Mr. Suddeth to the hospital. Mr. Stache testified that the victim's injuries were life threatening and that he was surprised to learn much later that he had not died. He attributed the victim's survival to the fact that he was in very good physical condition.

Mr. Stache testified that he had no contact with Mr. McCall.

There were no objections during the testimony of Mr. Stache and the defense did not cross examine Mr. Stache.



STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
 STATE OF SOUTH CAROLINA)
 _____)

AFFIDAVIT

Personally appeared before me Sara Lee M. Drawdy, who being duly sworn, says that she is an Assistant Solicitor with the 13th Circuit Solicitors Office and that she was one of the two prosecuting attorneys in the trial of Terry Edward McCall for Felony DUI Resulting in Great Bodily Injury, Indictment No. 2012-GS-23-10242, that occurred on May 12, 2015 through May 14, 2015. Ms. Drawdy also states that the within Summary of Testimony for Chris Stache, *supra* is her best recollection of the testimony given by Mr. Stache.

Sara Lee M. Drawdy
 Signature

Sworn to before me this
9 day of March, 2017.

Kelly Dready
 Notary Public for South Carolina
 My Commission Expires: 7.28.24

Sara Lee M. Drawdy (Bar# 1747)
 Print Name

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
 STATE OF SOUTH CAROLINA)
 _____)

AFFIDAVIT

Personally appeared before me, Jake Erwin, who being duly sworn, says that he is a Criminal Defense attorney, that he was with the Public Defender's Office in Greenville County in May of 2015, and that he participated as stand-by counsel for Terry Edward McCall during his trial for Felony DUI Resulting in Great Bodily Injury, Indictment No. 2012-GS-23-10242, that occurred on May 12, 2015 through May 14, 2015. Mr. Erwin further states that he does not recall anything about the testimony of Chris Stache.

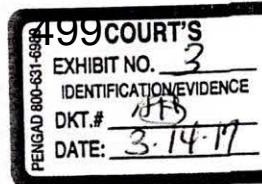
Jake Erwin
 Signature

Sworn to before me this
9th day of March, 2017.

S. Bradley Jollison
 Notary Public for South Carolina
 My Commission Expires: 12.30.24

Jake Erwin
 Print Name

(Bar# 79941)



STATE v. TERRY MCCALL

Original Indictment #: 2012-GS-23-10242

Appellate #: 2015-001097

Record Reconstruction Summary

Witness: Teresa Davis Dwease (State's Witness)

Position: Custodian of Records for Greenville Memorial Hospital System

[Day 2, Page 207]

DIRECT EXAMINATION BY: Sara Lee Drawdy

CROSS EXAMINATION BY: No cross examination

Objections during Testimony: None

Evidence introduced

The following exhibits were introduced and entered into evidence without objection:

State's Exhibits A, B, C, D, E, F, G, and H

Summary of Testimony:

Ms. Dwease testified that she is the Custodian of Records for the Greenville Hospital System. She testified that as part of her official duties she has custody and control of patient records for the Hospital System, to include the Emergency Room at Greenville Memorial Hospital. Ms. Dwease testified that she had been subpoenaed to testify and to bring with her certain records pertaining to the examination, medical care and treatment of Mr. McCall at the Greenville Hospital Emergency Room on March 4, 2012. She testified that State's Exhibits A, B, C, D, E, F, G, and H were true and accurate copies of documents from the patient records for Terry McCall from his treatment in the Emergency (hereinafter, ER) on March 4, 2012. She testified that these patient records were created and/or retained by the Greenville Hospital System in the ordinary course of business.

SJD JKE

Ms. Dwease testified that State's Exhibits A and B were copies of the Hospital's Chain of Custody form on which the ER nurse who collected urine and blood samples from Mr. McCall recorded information that documented the collection of those samples. She testified that these documents were copied and scanned as a permanent part of the patient's record.

Ms. Dwease testified that State's Exhibits C and D were copies of forms that the law enforcement officer provided and that State's Exhibits C and D were scanned into the hospital's records system by ER personnel during the time that Mr. McCall was in the ER.

Ms. Dwease testified that State's Exhibit E was a copy of the Emergency Room Patient Care Record for Mr. McCall from his visit to the ER on March 4, 2012. She testified that the doctors and nurses who examined and treated Mr. McCall in the ER created this ER Patient Care record by entering details of the examination, care and treatment of Mr. McCall into the hospital's automated record keeping system using terminals located in the Emergency Room. Ms. Dwease testified that the results of any lab tests were uploaded via computer to the Patient Care Record where they could be accessed by the treating physicians.

Ms. Dwease testified that State's Exhibit F was a record summarizing Mr. McCall's vital signs over the course of his treatment in the emergency room. She testified that State's Exhibit G was a record of the lab test results for Mr. McCall. Ms. Dwease testified that State's Exhibit H was a copy of the Discharge Instructions Receipt for Mr. McCall.

The State made a motion to introduce State's Exhibits A, B, C, D, E, F, G, and H into evidence and all of these exhibits were entered into evidence without objection.

There were no objections during the testimony of Ms. Dwease and the defense did not cross examine Ms. Dwease.

SZD JKE
